United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7513

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In The

United States Court of Appeals

For The Second Circuit

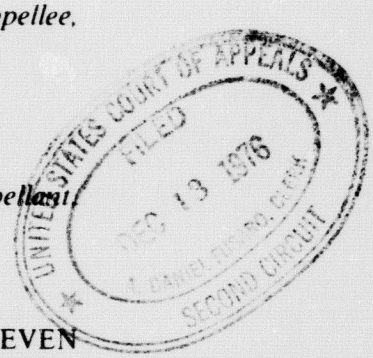
WEST & COMPANY, INC.,
Plaintiff-Appellant-Appellee,

vs.

ARICA INSTITUTE, INC.,
Defendant-Appellee-Appellant,

vs.

WEST & COMPANY, INC., STEVEN WEST, STEVEN WEST d/b/a MacDONALD-WINCHESTER PUBLISHERS, and JONATHAN ADVERTISING, INC.,
Counterclaim Defendants-Appellants-Appellees



APPENDIX

Volume II, pp. 217a - End

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geographical origin of that publication?

A It is October 1974, and it is from Austin.

Q Did you have an operation in the Austin area?

A Yes, we did, the Austin Teaching House.

Q In Austin, Texas?

A Yes.

Q And again it refers to Psychocalisthenics at the second page, page 37 of this Austin publication?

A Yes, it does.

Q Turning to page 11, that is a full sheet from a newspaper entitled the"Observer and Eccentric"in January of 1975.

Do you know what city that is?

A I have to read the article.

Q The article describes itself as being Detroit.

A Okay.

THE COURT: Perhaps you can suggest.

MR. KANE: It is Detroit, your Honor.

Q Let me ask, did you have an Arica Teaching House in Detroit at or about the date of this article?

A Yes, we did.

Q And was it giving Psychocalisthenics training?

A It certainly was.

Q Turning to page 14 there is another publication

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from Aspen, this from August of '74. Tell me, is Aspen an active center in this humanistic psychology or human potential movement?

A In some sense it is. It is not a big center but people like to go there and do things because it is so beautiful.

Q Again this publication at page 14 entitled the Aspen Flyer, does this article here deal with your Arica training?

A Yes, it does. It was actually run by the Boulder Teaching House. They had an arm. They sent people to Aspen and they lived there regularly for six months or a year and did programs.

Q And at page 16 we come to New York City with a cover story in the Village Voice dated January 27, 1975.

Turning to the second sheet of that article, maybe the third sheet on page 19, there is a box entitled "Arica Exercises, The Work That Comes Down."

Does that box describe in part your Psychocalisthenics exercises?

A Yes, it certainly did.

Q And at page 19 -- I'm sorry -- the exhibit is page 19.

Are these pictures of the Aricans at

your Arica House in New York?

A On page 19?

Q No, it is the exhibit within that Village Voice article.

A Yes, it is.

Q And what does the caption read on the picture?

A "Psychocalisthenics, Aricans doing their yoga exercises."

Q Later on in this exhibit there are publications from London and even from France in the French language at page 21. There is a French publication at page 21, can we turn to this page, please. There is an excerpt there from a magazine entitled "Psychologie." On page 40 of the magazine, Psychologie, in the lower right-hand corner is apparently the French version of Psychocalisthenics, and can you tell me if that article deals with your Arica training in France?

A Yes, it does. We have a strong house in Paris that does Psychocalisthenics classes, 40-day training and things like that over there.

Q Finally, page 22 in this exhibit is an excerpt from the Chicago Tribune of Thursday, March 6, 1976, which talks about Arica Psychocalistenics training again.

Did you have an Arica Training House in Chicago

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in March of last year?

A Yes.

Q Was it giving Psychocalisthenics exercises?

A Yes, it certainly was.

Q And page 23 is a full page editorial article from the New York Daily News of August 13, 1975, and again, do you find reference to Psychocalisthenics in the left-hand column?

A Yes, about a third of the way down.

Q Is it describing the Arica Psychocalisthenics courses?

A Yes, it is.

Q Going back -- the last reference in this Exhibit L, I would like you to turn to page 5. I would like you to direct your attention to page 5 of this exhibit. What paper is that article from?

A This is from the San Francisco Chronicle.

Q And the date?

A Monday, May 6, 1974.

Q And again it is talking about Psychocalisthenics.

MR. KANE: This is page 5 of this exhibit, your Honor.

Q Page 5 has an article from the San Francisco Chronicle of May 1974. Again, did you have an Arica House

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in San Francisco at that time?

A Yes.

Q Giving Psychocalistnenics training, among other things?

A Yes.

Q This article is about Psychocalisthenics at San Francisco General Hospital. Can you tell us in brief how you come to be giving Psychocalisthenics at a hospital?

A It was a pilot program. We had done some little two-hour things at some hospitals in Vermont and some other places of a demonstrative nature and we wanted to see if our work was effective in a hospital. In San Francisco they proposed it at the San Francisco General Hospital, got an experimental program in there in which the hospital employees, the doctors and nurses and orderlies and people were given time off from their work and they did Psychocalisthenics.

Q I would like to give you a contract which I have marked with the letter N.

(Defendant's Exhibit N marked for identification.)

xx

Q I hand you a contract that has been marked Defendant's Exhibit N for identification and I refer you

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to the second sheet of that contract.

Is that your signature?

A Yes, it is.

Q What date did you execute this contract?

A December 17, 1974.

Q And with whom did you make this contract?

A I was signing a contract between the Arica Institute and Forest Hospital in Desplaines, Illinois.

Q And with whom did you deal at Forest Hospital?

A Morris Squire.

MR. KANE: Mr. Squire is here from Chicago but he has to go back to Chicago on an early plane. If I may, I would like to interrupt Mr. Stroud's testimony and put Mr. Squire on.

THE COURT: Yes.

MR. KANE: I would like to move the admission of the contract that has been marked Exhibit N.

MR. DUBAN: I have no objection.

(Defendant's Exhibit N received in evidence.)

xx

(Mr. Stroud temporarily excused.)

gwrf 14

M O R R I S B. S Q U I R E, a witness called by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KANE:

Q Mr. Squire, I would like to hand you this Defendant's Exhibit N and refer to the second page and ask if you recognize your signature thereon?

A Yes, sir, I do.

Q Did you make this contract on behalf of Forest Hospital with Arica?

A Yes, I did.

Q Will you give us some of your background, please, your present occupation, your affiliations and so on?

A I am the president of two hospitals, one in Springfield, Missouri, which is a general hospital with a psychiatric unit, and one in Desplaines, Illinois, called the Forest Hospital.

I am the chairman of the board of both of these hospitals. My background and training is in administration and psychology. I am on the staff of the University of Illinois, Department of Psychiatry, as an instructor.

I have had a variety of experience teaching around the world. I do sit on several universities and

other places.

Q And your present occupation is as administrator of Forest Hospital?

A I am president of both of these hospitals. I was formerly the administrator of this hospital.

Q What was your first knowledge of Arica?

A I guess it must have been in '71, around '71 somewheres. I was in a training program at Esalen and I met John Lilly, who after this training program was going to a year-long training program given by Oscar Ichazo, the head of Arica, who at that time was in South America.

When he came back he talked at length about his experiences there and thereafter my next experience -- I heard things about it.

In '74 I was in New Orleans at the American Humanistic Psychology Convention, and that program -- I participated in several programs given by Arica in Psychocalisthenics. I was particularly interested in that area because it seemed a very unusual and new way of approaching a dynamic I was looking for in treatment of patients.

Q This New Orleans meeting, what time of year was that?

A Winter, I believe. It was the late fall. I am not sure of the date of the New Orleans meeting. I am pretty sure it must have been in '74.

Q And the organization again, the name?

A American Humanistic Psychology Association.

Q Approximately how many were in attendance at the New Orleans meeting, if you know?

A Thousands. A lot of people.

Q More than a thousand?

A Yes, a lot of people there.

THE COURT: What year?

THE WITNESS: I believe it was '74.

THE COURT: Late in '74?

THE WITNESS: I don't recall exactly the time. Yes.

Q At this meeting you witnessed a demonstration of Psychocalisthenics?

A I participated in it. It was on the roof garden, as I remember it and it was early in the morning and I got up and these people were picking grapes on the roof. I enjoyed that because I thought it was an unusual approach to exercise. They were doing something called the axe which is a swinging exercise. Anyway I can get people to participate in their own body tone as another

form of health. I am very interested in a health system particularly for patients.

Q So you were interested in Psychocalisthenics for the patients in your hospital?

A Yes.

Q And did you take steps to see that training was given to your patients?

A Yes, I encountered people there and I talked to them a bit about whether or not they would be willing to come to Chicago to train our staff.

Q When you say the people, are you talking about the people from Arica?

A Arica trainers, since they were especially trained, and I like to believe people who are especially trained can do a better job than I myself who may have had one experience. So I talked to them. We had many phone conversations and letters and I have on file with me many letters that went back and forth from Arica to myself, which finally culminated in this contract, which I think was an excellent experience.

We are doing it every day so it is a really good thing for our patients and staff.

Q Would you identify the contract exhibit by exhibit letter?

A It says N.

Q That's right.

So this contract was performed by Arica, was it?

A Yes, it was.

Q And you paid them money for this training which they gave?

A Lots of money. I think it is appropriate to pay people for their training and for their experience.

Q Have you found Psychocalisthenics to be of value to your patients?

A We use it every day. We have several different kinds of exercises. We do an exercise in the pool in the morning, we use an exercise called chicken fat, which is a record done by Preston Foster. Again it is a way of hooking people into exercises for their own health. Arica Psychocalisthenics, which is the Arica form of exercise, is done every day between 4:00 o'clock and 5:00 o'clock in our halls and we call it Psychocalisthenics. It is done by people who have been trained by Arica.

THE COURT: You said you call it what?

THE WITNESS: Psychocalisthenics.

Q Who conducts the course?

A These are people who have been trained by the

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Arica trainers and we have some staff who came from the Arica House, who had long programs of training themselves and they are employees of ours and they are involved in Psychocalisthenics health training.

Q Does the Arica organization maintain a particular interest in your program?

A I think it is appropriate always to retrain my staff and have them know what they are doing as well as they can. So I continue to educate and advance their abilities. So after three or six months or whatever time we can arrange it, somebody comes from the Arica House in New York and does a training program for us.

Q Have you any knowledge of Mr. West's book?

A I just heard about it. One of my staff people said there is a book like this and I said, "Who is it by?"

There was a presumption it was by Arica. Psychocalisthenics, as far as I know, is an Arica term. I never heard it from anybody else. When I was then called about this trial, I found out that it was not done by the Arica but by somebody else. I have not read the book and I don't know of the book of my own. It is just that I heard about it.

Q You had heard about it from your staff people?

A That's right.

Q And your staff people had assumed there was some association between Arica and the book?

A That's the feeling I got. I know for sure this is not an Arica book, this is somebody else's book about something. I don't know what it is about. What I am teaching -- what we are teaching at our hospital is the Arica Psychocalisthenics.

MR. KANE: No further questions.

CROSS EXAMINATION

BY MR. DUBAN:

Q When did you say the first time that you heard of Psychocalisthenics?

A To my best recollection it was on the roof garden of this New Orleans hotel.

Q What date was that again?

A I don't know the date.

Q Was it in 1973?

A No, I think it was in '74, late.

Q Late '74?

A Yes.

Q That was the first time you had ever heard of Psychocalisthenics?

A I don't remember it before that.

gwrf 21 Squire-cross

Q Did you, in your knowledge of Arica, prior to that ever hear of gym?

A Yes. That was the kinds of things Lilly talked about when he came back. This is a rigorous training program, a gym training program given by Oscar Ichazo.

Q Were you familiar with gym and what the exercises were?

A Just in the conversational system. I hadn't read on it. I knew very much about Dr. Lilly. I felt his word, his understanding of this was sufficient for me. If he said it sounded good, I trusted his judgment.

Q What developed your interest in these exercises after it became known as Psychocalisthenics rather than prior to that time when it was known as gym?

A I had never done that before. That was the first time I did them.

Q How were you exposed to it?

A It was at this conference and the Arica people were giving a demonstration and I got up early in the morning and came to the demonstration and participated.

Q It wasn't because of the fact that the name was Psychocalisthenics and that generated some interest for you?

A Nathan's hot dogs were pretty good, by the way.

You come to New York and you eat Nathan's hot dogs. I suspect I was interested in it. I wouldn't have gone to it had I not thought it was given by a reputable organization.

Q But if they were going to sponsor gym on that date, would you have gone?

A The Arica Gym, I went to that particular gym.

Q I mean if they called that particular exercise on that date Gym instead of calling it Psychocalisthenics, would you have had just as much interest in going?

MR. KANE: Objection, your Honor. It is a hypothetical question. It is remote.

MR. DUBAN: I am trying to ascertain whether the Gym had significance.

THE COURT: Overruled.

MR. KANE: Let's hear the question again.

(Question read.)

THE COURT: I will allow the question. It is pretty speculative. Go ahead.

A If it had Arica in front of it, I was interested in Arica, I was interested in what they were doing. I had a great deal of curiosity about it. I would have gone. They could have called it Applesauce and I would have gone.

gwrf 23 Square-cross

Q If they called it Arica Applesauce, as you said, you would have gone?

A I was going to get their exercise.

Q Arica was the thing that was really paramount in your mind?

A Right. But at that date they called it Psychocalisthenics and I went to see it. I my head at that time it was an exercise system and I went to see that.

Q Now that you are familiar with Psychocalisthenics, are the exercises contained therein similar to any exercises that have ever been given before Arica?

A No, not to my knowledge. They are particular and peculiar to that system. I know a lot of exercises. I have participated in a lot of exercise programs to find out the best, most useful for our patients. I say we have three different kinds of exercise programs in our hospital, and this is a very particular exercise system.

Q Are you familiar with the other Arica terms?

A Some of them.

Q You are familiar with diamond training?

A I know the word. I am not familiar with the process. I just know the word.

Q Are you familiar with alpha heat?

A I know the word. I could maybe think about it. It looks like the top of a triangle to me, but I don't know what the process is.

Q Are you familiar with eurhythms?

A No, I am not.

Q Are you familiar with opening of the rainbow eye?

A I know that word, yes.

Q But you don't know what it really means or stands for?

A Yes, I have an idea what it stands for.

Q Without going through all the other Arica terms, what interested you in this one particular phase of Arica, Psychocalisthenics or Gym?

A I take what I think is appropriate for the treatment of our patients and I try to bring that into the hospital.

Q But you are not aware of the other courses they have which may be more helpful?

A This is the on that I personally am aware of. My staff is aware of probably all of them because they have been especially trained by Arica in all of the programs, and it is their function to do the programs, not my function. It is my function as I see it, as president of the hospital, to bring new ideas that

gwrf 25 Squire-cross

can be learned by my staff and then if my staff feels it is appropriate, they use them. They feel it is appropriate. They are using it.

Q Are you familiar with the term consciouness doubler?

A No.

Q Do you know if that is an Arica term?

A I don't know.

Q Do you have any first-hand knowledge as to where Arica obtained the name Psychocalisthenics?

A I guess they invented it.

Q You guess, but do you have any first-hand knowledge of that?

A I never heard it before, so it is my presumption they invented it. They brought it to me, I am using it.

Q Do you have any first-hand knowledge as to who in Arica invented the term Psychocalisthenics?

A I imagine it came out of the Arica cadre They are bright, young people who do a good job in what they are doing. I feel they are a very honorable, honest organization and I do business with them because I believe that.

Q But you just assume that they invented it but you don't have any real concrete knowledge?

gwrf 26 Squire-cross

A I never heard it from anybody else, so I have to know it is theirs.

Q You have to know it is theirs?

A That is my presumption. If I have never heard it anywheres else --

Q It is only a presumption, it is not a fact.

A I didn't see it in the bible.

MR. DUBAN: Thank you. I have no further questions.

MR. KANE: Thank you.

(Witness excused.)

MR. KANE: While Mr. Stroud's testimony is interrupted, I would like to call another witness with whom we have a time problem, if I may.

G E O R G E J E R O M E G O O D M A N,

called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KANE:

Q Mr. Goodman, would you identify yourself for the Court in terms of your education, formal education, and business background?

A Yes. I am a graduate of Harvard College. I was a Rhodes Scholar at Oxford University. I am one

of the founders of New York Magazine. I was formerly an editor of Fortune Magazine before that. I have since been an author and consultant, and I have written a number of books, magazine articles.

Q Would you identify some of your books?

A Some of my books which I have written under the pseudonym Adam Smith are the Money Game, Supermoney and Powers of Mind.

MR. KANE: I would like to mark this as Defendant's Exhibit O.

(Defendant's Exhibit O marked for identification.)

Q I hand you an exhibit marked Defendant's Exhibit O for identification.

Can you identify that book, please?

A That is my book.

Q And the title?

A Powers of Mind.

MR. KANE: I would like to offer that in evidence, please.

THE COURT: Mr. Duban.

MR. DUBAN: I have no objection, your Honor.

(Defendant's Exhibit O received in evidence.)

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Q Mr. Goodman, how did you come to write that book, Defendant's Exhibit O?

A When I finished my previous book, which is a financial book, I was very interested in various areas of psychology and I decided to take a year off and explore some of these areas of psychology. In the course of exploring them one of the courses I took was the Arica course but it was not the only course.

After about a year I wrote an article in Psychology Today and subsequently another article in Psychology Today and after that my publisher indicated an interest in doing a book on this and I wrote the book, which was then published in October of 1975.

Q Approximately when was this year you took off?

A Well, it was actually more than a year. It began in May of 1972 and I continued this sort of research until well into 1974. In fact, I continue to do it.

Q What was the general field of research?

A I would characterize it as fringe psychology or esoteric psychology. It had to do with states of consciousness.

Q Can you name some disciplines or schools in this area which you studied?

A That would include various forms of yoga, EST,

Silva Mind Control, Arica --

THE COURT: EST? What does that stand for?

THE WITNESS: Erhard's Seminar Training.

Q What is Silva Mind Control?

A That is a commercial organization.

Q Is that sometimes known as Silva Mind?

A Yes.

Q And Arica?

A That's right.

Q What was the nature of your study of Arica?

A I entered a training in May of '72 which was called New York Three. It was a 90-day training offered by the Arica School. Subsequent to that I was in another training which lasted approximately another three months.

Q When did you first hear of the term Psychocalisthenics?

A I heard of it while I was in the course at Arica.

Q At Arica?

A Yes.

Q How was it explained to you? What was it?

A Well, at that time it was the name for the Arica Gym. The Arica Gym itself I would characterize as being an eclectic combination of yoga, modified yoga, exercise.

gwrf 30 Goodman-direct

Q Did you learn the source of the name?

A Yes. Arica was so full of invented words, compound invented words, that I assumed the source had come from Oscar Ichazo.

Q Did you find it was Arica's practice to coin words?

A It was Arica's habit to coin words. In fact, I believe I said in Psychology Today, a magazine which followed my studies in these various schools with a great deal of interest since they helped to publish the results, and in the article that I wrote in Psychology Today in July of 1973, I believe that I said something like Oscar has a great talent for inventing compound words and I mentioned several of them, not only Psychocalisthenics.

Q In your study of the field in preparation for your book, Defendant's Exhibit O, and in your readings and travels since then, have you come across any other use of Psychocalisthenics outside of Arica?

A Yes, I did. I saw an ad in the Wall Street Journal for a book called Psycho-Calisthenics. I believe it was in the Wall Street Journal.

Q Did you form any impression when you saw the ad?

A Yes, I did. I knew that Arica was planning

to publish some sort of pamphlets or books or courses themselves, and I assumed that they were about to bring out or were bringing out their book of the Arica Gym.

Q So you thought The Wall Street Journal reference was in some way associated with Arica?

A I did.

Q Do you believe other students in this field would be similarly -- would similarly see a linkage or possibility of a linkage?

A I would think if they were familiar already with the Arica term Psychocalisthenics that they would assume that that was a book about Arica Gym.

Q Do you think that Arica will be affected in its ability to conduct its activities if a book is on the market, a non-Arica book, called Psychocalisthenics?

A I certainly think it would contribute to confusion.

Q Outside of that book and Arica's use of Psychocalisthenics, have you found any other use of Psychocalisthenics in any of these human potential movements in all of your years of study?

A No, I haven't.

MR. KANE: No further questions.

CROSS EXAMINATION

BY MR. DUBAN:

Q Were you in the courtroom a few minutes ago when Morris Squire was testifying?

A I don't know who that is.

Q He is the gentleman who was sitting right where you are sitting before you.

A I was here for part of his testimony, only the last part.

Q Did you hear him respond to my question, which was: Are the exercises of Psychocalisthenics like any other type of exercises? Did you hear his answer to that?

A I didn't.

Q His answer was that they are unique to Arica and unique to Psychocalisthenics.

Was it your testimony a few minutes ago that Gym or Psychocalisthenics are modified yoga exercises?

A I believe they are. I believe they have a basis in yoga. But they do not exist in any yoga course that I have ever been aware of. So when I say modified, they are moving exercises. If I say it has a basis in yoga, it's because I made one of my businesses in the research of this book to trace back the origins of Arica

and, in fact, all of the other courses, some of which have sources that are thousands of years old. I know of nothing like the Arica Gym per se, but plainly body motions, allied breathing and certain other motions can be said to, because of the awareness of your consciousness while you are doing them, belong to a particular technique.

Q But they do have a basis in yoga, though?

A Well, I can't testify to that for sure, because I don't know formally what the basis is. But it seemed to me that they did have a basis in yoga.

Q Are you familiar with yoga?

A To some degree.

Q Do you know what the word "assana" means?

A Yes, I do.

Q What does it mean?

A Assana is a basic posture in yoga.

Q Would you say that that is carried through in Gym or Psychocalisthenics?

A No. The assanas that I am familiar with in yoga are stationary, that is to say, there is no motion in them.

Q When was the first time, again, that you said you had heard of Psychocalisthenics?

A I would say that it was at the time that the

Arica Gym was administered in the early summer of 1972.

Q The early summer of 1972.

And then it was called Gym?

A I think it was called Psychocalisthenics, but it was also called Gym.

Q It was also called Psychocalisthenics in 1972 by Arica?

A I am not sure of that.

Q But you might have heard the name Psychocalisthenics in 1972?

A Yes.

Q Now --

A The reason that I can pin that date to it is that I know I used it in the Psychology Today article which appeared in July of 1972 and where the manuscript was turned in in February of 1973 and which I wrote in the latter part of 1972.

Q So then you feel confident that you heard the term Psychocalisthenics used around the end of 1972?

A Yes, I do.

Q Your book, Powers of Mind, I understand is a very good seller, it's been on the Best Seller List for a long, long time.

A It's called Powers of Mind. I think it has

sold approximately 65,000 hard covered copies outside of the Book-of-the-Month Club.

Q Sixty-five thousand outside of the Book-of-the-Month Club.

How did you come to adopt the name Adam Smith?

A Adam Smith was the name of a column that I wrote in New York Magazine in 1966. It was designed to be a column like those in various British journals where there was a pseudonym used such as Lex or Justinian. I was doing a financial column actually modeled after Lex and Justinian in the Financial Times and Sunday Times of London.

Q You certainly are very familiar in literary circles. Have you ever heard the name Adam Smith used by any other writer?

A Living writer?

Q No, dead writer; living or dead.

A Well, obviously. As I just received an award in the tradition of the original Adam Smith at the Massachusetts Institute of Technology, I am aware of the original Adam Smith.

Q That is what I am referring to. There was an original Adam Smith?

A There certainly was.

Q Do you know the most popular bookwritten by that Adam Smith?

A I think the best known is The Wealth of Nations.

Q That's correct.

A The Theory of Moral Sentiments was also very popular, also by the original Adam Smith.

Q Do you know how many other books that the original Adam Smith wrote?

A The original Adam Smith wrote those two books per se. I think he had some other essays which may have been published since in other forms.

Q But certainly Wealth of Nations was a very widely read book, a very highly respected book at the time?

A Indeed.

Q In your many sales of your book, did you ever have any instances of anybody confusing the author?

A Oh, yes.

Q You did?

A Oh, yes.

Q And they felt you might have been the other Adam Smith?

A Obviously it takes some degree of ignorance to confuse The Wealth of Nations, which was published in

1776, and The Money Game, which was published in 1968; but, for example, I did get a request from the University of Ibadan in Nigeria. I am telling this because it amused me at the time. They wanted permission to use my book, The Wealth of Nations, in Nigeria.

Q However, the instances of confusion were not great, were they?

A Well, sir, I can't believe among very sophisticated people that they could have been great, but I can tell you that when I went around the United States doing television shows in promoting these various books, people who aren't sophisticated in the field would say, "Didn't you write something about free trade or economics?"

And I would say, "Yes, I did."

But the original Adam Smith is quite unreadable. I don't like to be confused, and I resented it when a paperback of The Wealth of Nations was brought out deliberatel to capitalize on The Money Game. Deliberately, it seemed to me.

Q But let's get to the case in point.

You say that the name Psychocalisthenics in your mind was associated with Arica?

A Yes.

Q If Arica came out with a book -- I am going

to ask you something hypothetically because you are an expert witness. You have been brought here today as an expert witness.

If Arica came out with a book called --

MR. KANE: I object to that. We have not brought Mr. Goodman as an expert witness.

THE COURT: I haven't heard the question yet, Mr. Kane. Let's hear the question.

Q If Arica Institute were to publish a book on which the name is very prominently displayed on the cover Arica Psychocalisthenics, do you think it would be confused with this book that is just called Psycho-Calisthenics?

A I could think there would be some degree of confusion.

Q There would be some degree?

A Sir? Are you saying that if Arica -- you are giving me a geometry question the way I read it. If Arica was nine-tenths of the cover and Psychocalisthenics was very small, I would get an Arica emphasis, but since my original reaction to seeing the ad in The Wall Street Journal was that Arica had published a book, I think there would continue to be some confusion. Of course, it is speculation on my part.

Q Mr. Goodman, I show you this picture of a

book cover and ask you if you can identify it?

MR. KANE: May I see what the witness is being shown?

THE COURT: One at a time, Mr. Kane.

A I haven't actually seen the book.

Q What does it say?

A It says Arica Psychocalisthenics.

Q Is the word "Arica" in larger type than "Psychocalisthenics"?

THE COURT: I think Mr. Kane wants to see it.

MR. DUBAN: Surely.

(Document handed to Mr. Kane.)

MR. KANE: I object to the last question, your Honor, on the ground the book picture speaks for itself.

THE COURT: But it is not in evidence yet, Mr. Kane.

MR. KANE: Then I will object to the question because the book is not in evidence.

MR. DUBAN: I would like to offer the book into evidence.

THE COURT: The book?

MR. DUBAN: This page of the book.

THE COURT: It is a picture of the book, isn't

it?

MR. DUBAN: Yes, a picture of the book.

MR. KANE: I think the volume we are dealing with here should go into the record.

MR. DUBAN: Fine.

THE COURT: If we have it.

MR. KANE: I mean the booklet that is being handed around.

THE COURT: All right.

MR. KANE: No objection.

xxx (Plaintiff's Exhibit 4 was received in evidence.)

BY MR. DUBAN:

Q Is it your opinion that either the West book Psycho-Calisthenics or the Arica Psychocalisthenics would appeal to the general public or only a specific portion of the general public?

A It's very hard to know what would appeal to the general public.

MR. KANE: I object to this, your Honor. What is the general public and who is Mr. Goodman to testify about it?

THE COURT: Yes, I think it is a little too broad or vague or general, and I take it the witness has

the same problem I have with the question. Let's try again in another form, Mr. Duban.

Q Do you think that a person that might be tempted to buy Psycho-Calisthenics would have had a prior exposure to Arica?

A Not necessarily.

Q That he had never heard of Arica?

A It's certainly possible.

Q In your experience as having been an editor, I believe it was --

A Yes.

Q -- in Fortune Magazine --

A Yes.

Q -- and New York Magazine, if you were to go to a book store and see these two books side by side, would you confuse one with the other?

A Well, the name of Arica is clearly on the Arica Psychocalisthenics book.

Q And you would think that the other book is clearly written or sponsored by somebody other than Arica?

A No, I wouldn't think that. Are you assuming that I have never heard of Arica?

Q Yes.

A I can't make that assumption. I don't know.

Since I heard it in Arica, it's pure speculation for me to try to imagine a situation where I have never heard of either and I am going into a hypothetical book store and trying to figure out whether Arica, which I have never heard of, is not part of that book and is part of that book.

MR. DUBAN: Thank you. I have no further questions.

REDIRECT EXAMINATION

BY MR. KANE:

Q In your experience as an author of books that have sold with some success, it is your experience that books' reputations are made solely on physical examination of the book or is word of mouth a factor?

A Word of mouth is a factor; television is a factor; the description that goes with the tile is a factor.

Q At page 259 of your book -- this is in part of the chapter on Arica -- it says:

"Oscar liked making up compound words" and then you list Psychocalisthenics, kinerhythms.

Did you discuss these words with Oscar?

A No, I didn't.

Q Do you have an opinion on the effect of a disclaimer of any association with Arica if such a

disclaimer were put on Mr. West's book? Would that solve Arica's problems that you testified to earlier?

A I don't believe in disclaimers. Disclaimers are very rarely effective. If disclaimers were effective -- you know yourself the effect of the printing on the side of a pack of cigarettes.

MR. KANE: No further questions. You may step down.

THE COURT: Thank you.

(Witness excused.)

THE COURT: Mr. Kane, are we ready for a short recess?

MR. KANE: Yes, I think so.

(Recess.)

MR. KANE: I will call Phil French.

P H I L F R E N C H, called as a witness by the defendant, being first duly sworn, testified as follows.

DIRECT EXAMINATION

BY MR. KANE:

Q Mr. French, where are you from?

A I am currently residing in Boston.

Q And how long have you been there?

A Three years.

Q What is your educational background?

A I have a Bachelor's in engineering from Vanderbilt University and a Ph.D. in electrical engineering and physics from North Carolina State University.

Q When did you first hear of Arica?

A I heard of Arica in '71, I think, the Chile training.

Q Did there come a time when you yourself took Arica training?

A Yes, I did.

Q When was that?

A 1972, January.

Q And where was that?

A New York.

Q And have you been associated with Arica since then?

A Yes, I have.

Q In what capacity, what responsibilities, what duties generally? Bring us along to date.

A I perform various functions. I have done everything from being a janitor in the facility to financial position. I was the bookkeeper in Boston for over a year. I am currently involved in setting up a training in Vermond, 40-day training.

Q When did you go to Boston?

A I went to Boston in January of '73 -- no, I am sorry. I went there in May of '73.

Q And that was on Arica's business?

A Yes. I went there for that purpose.

Q Was there an Arica House in Boston before you came?

A Yes.

Q Did you become associated with it?

A I did.

Q Have you been associated with it ever since?

A I have.

MR. KANE: I would like to mark this mailing piece as Defendant's Exhibit P for identification.

xx (Defendant's Exhibit P was marked for identification.)

THE COURT: Where is the Arica House in Boston?

THE WITNESS: Our current business address is 475 Commonwealth Avenue. Previous to that it was 815 Boylston Street.

THE COURT: 475 Commonwealth?

THE WITNESS: That is our present business address.

THE COURT: Where is that with relation to the Vandome?

THE WITNESS: The Vandome is closer to the Commons, Kenmore Square.

THE COURT: Past where the Somerset used to be?

THE WITNESS: Yes.

THE COURT: Does Arica have any interest in Kenmore Square and the Boston Red Sox?

THE WITNESS: Not directly.

THE COURT: I hope not, because I am a Yankee fan.

I am sorry. Go ahead.

Q The document that has been marked as Defendant's Exhibit P for identification, do you recognize it?

A Yes. This is a brochure that we sent out. This, as I recall, is a fall brochure. It was designed by Thomas Ginelli.

Q Is he an individual who was at the Boston House at that time?

A Yes, he was.

Q And does it mention Psychocalisthenics?

A Yes. We had a schedule that we offered Psychocalisthenics about three times a week, and this is --

Q That is on the calendar portion?

A Yes.

Q Does it elsewhere in the brochure explain what Psychocalisthenics is?

A Yes.

"Best described as a combination of various yoga systems, dance and calisthenics. Restores the natural unity between breathing and movement."

Q You have just read a section of this Defendant's Exhibit P?

A Yes.

MR. KANE: I would like to move the admission of that exhibit, please.

MR. DUBAN: No objection.

xx (Defendant's Exhibit P was received in evidence.)

Q Was that Exhibit P distributed in the Boston area?

A I talked with Cynthia Crisp, who headed up our mailing at that time, and her best estimate is that this was sent to approximate two thousand people of our mailing list in the Boston area.

Q About what point of time?

A That was fall, the Labor Day issue. I am not precise there.

Q Of what year?

A 1973. It says on there.

(Pause.)

A 1973, yes.

Q And did you participate to some extent in its preparation when you came to Boston in the spring of '73?

A Yes. I remember how this brochure was put together. There were nine of us who participated in some way in the decisions about it.

Q Do you have any knowledge of the numbers of persons who have come to the Boston House for trainings, including Psychocalisthenics?

A I can be approximate. There are a couple of hundred people who took the 40-day. That included Psychocalisthenics. These are rought estimates now on my part. There were a few hundred who did the Open Path workshops. That included Psychocalisthenics. Then, of course, there were Psychocalisthenics courses which we offered, one of which turned out to be popular. It was the Wednesday noontime Psychocal. It is an abbreviation for Psychocalisthenics.

Q And what did it involve?

A It involved at noontime us teaching this course in Psychocalisthenics, which is 22 precise movements.

Q Did you say that currently you are working on a training, a 40-day training?

A Yes, we are preparing for one in Vermont.

Q Will that include Psychocalisthenics?

A As it alsways has.

Q Each day?

A Yes.

Q Where and when will this training be given?

A It will start July 12th. It will run for six weeks in Lindenville, Vermont.

MR. KANE: No further questions.

EXAMINATION BY THE COURT:

Q Mr. French, I notice here on this calendar for the fall of '73 a class on Monday at 6:00 P.M., mantra and mudras. I am not sure I am pronouncing this correctly but it is spelled m-u-d-r-a-s. And something else that I saw in another exhibit this morning. There was a reference to a mantrum. I suppose mantra is the plural of mantrum.

A Mantra is the way it is pronounced.

Q What is mantra and what is mudras?

A I am not sure how it figures directly in this.

Q I am not suggesting it does. I am just curious.

A Mantrums or mantra can be precise sound that is used to sensitize the body. We normally think of sound as just with our ears, but in truth sound resides within our body. It can be used in that way for specific effects, that is, a sound can resonate in the lower belly, the middle of the chest, the throat.

Q Is this a sound that is created outside the body?

A No, you make it yourself. The most common mantrum perhaps known in our culture would be the om.

Q Could you be a little more specific? How can I have an om?

A You would intone the word. It can be done in many ways, but more than that would be your awareness of your internal self while you do it.

Q What about a mudras?

A Mudras is again a precise body position designed to yield a specific internal result. I was struck by the fact that when I took the oath of office that I raised my hand in this fashion. This is similar to a mudras.

Q Are these words that were coined by Arica?

A No, these are very ancient words. They go back into Sanskrit. They are very ancient.

THE COURT: All right, Mr. Duban.

CROSS EXAMINATION

BY MR. DUBAN:

Q Mr. French, you were just discussing some of the Arica terms and some you say have derived from other sources throughout the years?

A Oh, yes.

Q Are you familiar which ones are original Arica words and which ones have been derived over the course of time?

A I think so.

Q You do. Would you say that alpha heat is an original Arica term?

A Yes, yes.

Q Is that a trademark of Arica?

A I am not familiar if it has been trademarked or not. I am familiar that it has only been heard, to my knowledge, within the context of Arica.

Q You heard the word telologic before?

A Telologic? No.

Q Are you familiar with the phrase" circle of light"?

A Yes.

Q Is that an Arica term?

A It was a word that I first heard inside of Arica.

Q And you had never heard of anywhere else?

A "Circle of light," I don't think so.

Q Do you know the derivation of the mark Psychocalisthenics?

A Historically I do. But to the best of my knowledge, this word was coined by Oscar Ichazo and it was around for a while while we were using the word Gym. But then in '73 Arica made it, as it were, official, that is what we were going public with, that we would use Psychocalisthenics in a public way to distinguish our programs.

Q Did Mr. Ichazo tell you personally that he coined Psychocalisthenics?

A No.

Q This is just hearsay information?

A I am going on hearsay evidence, that is correct.

Q For all you know, he could have heard it from somebody else?

A He could have.

MR. DUBAN: Thank you. I have no further questions.

(Witness excused.)

S T E V E N A R T H U R S T R O U D, resumed.

DIRECT EXAMINATION (CONTINUED)

BY MR. KANE:

Q Mr. Stroud, did there come a time when Arica prepared a program for presentation on cable TV?

A Yes, there was.

Q What was your association with that project?

A I don't know what the technical term is in the movie business. I produced the show, I got everyone there together, hauled the video camera around. It was my voice announcing on it and I played with the music.

Q How do you arrange for such a show to be broadcast on cable TV?

A They have standard forms which you write and ask them for and you send them a copy of your show and fill out the form and apply to go on and they put you on. I believe they are required by law to do it.

MR. KANE: I would like to mark this document whose title is "Cable TV Guide, Sterling Manhattan, June 17-23" as Defendant's Exhibit Q.

xx (Defendant's Exhibit Q was marked for identification.)

Q I hand this Defendant's Exhibit Q to you and ask you if you recognize that document.

A Yes, I do.

Q Turning to the inside page at the bottom, there is a copyright notice of 1974. Does that accord with your recollection of when you did this cable TV show?

A Yes, I did do it in 1974. I don't see the copyright notice on here.

Q Is it on page 2?

MR. KANE: Yes.

Q Who is Grey Wizard?

A It is one of their other shows. It doesn't have any connection with us.

Q Turning to pages 4 and 5, do you see a reference to Psychocalisthenics?

A Yes, right on the top of both pages.

Q Would you read the text?

A "Ten o'clock.Let's get in shape.

"10:30. Arica Psychocalisthenics Monday, Tuesday, Wednesday, Thursday and Friday."

Q So it is referred to on the top of both pages 4 and 5?

A Yes, 10:30.

MR. KANE: Your Honor, we have the tape that was broadcast on cable TV and I would like to just play the beginning portion of it at this time.

MR. DUBAN: In the interest of time, we will concede the fact this was in fact played on cable TV under the title Psychocalisthenics.

MR. KANE: I had planned to show the beginning and end. Let me say before the tape rolls, what is here is the beginning of the program, which consists of a first brief announcement about the series of exercises, Psychocalisthenics, and then it begins giving the actual exercises.

THE COURT: I suppose the tapes ought to be marked in evidence.

MR. KANE: We will mark it. It is a single tape.

(Tape played.)

MR. KANE: This is the beginning of picking grapes. One of the witnesses mentioned that this morning.

If the Court please, I would go to the end of the program now.

(Tape played.)

MR. KANE: I would like to offer that tape just played in court as Defendant's Exhibit R. When it is off the machine we will mark it.

MR. DUBAN: I have no objection.

xx (Defendant's Exhibit R was received in evidence.)

MR. KANE: Let me mark as S and T two LP records, one entitled Arica Audition and T entitled Arica Heaven.

xxx (Defendant's Exhibits S and T were marked for identification.)

Q Mr. Stroud, as to the cable program we just saw, do you know how long that was broadcast by the cable TV people?

I knew for a fact that they played it five days a week Monday through Friday from June until December of 1974. Now, I thought I caught it a few times afterwards and I think what they might do is re-run it periodically if they need a program. From June to December they definitely did.

Q Was that voice on the video yours?

A Yes.

Q Throughout the program?

A Yes.

Q Let me hand you these LP records that have been marked Defendant's Exhibits S and T.

Before I hand them to you, let me ask you a few questions.

The video tape referred to LP record which you were offering for sale?

A Yes.

Q And was that the music that was played in the back of the video presentation on these records?

A That was the music that was in the back.

THE COURT: Do we really need these in the record?

MR. KANE: I want to put them in the record.

THE COURT: Do you have any objection?

MR. DUBAN: I have none, your Honor.

xxxx (Defendant's Exhibits S and T were received in evidence.)

Q Mr. Stroud, I found a loose piece of white printed material inside this Arica Audition. That is not part of this exhibit, is it?

A No.

MR. KANE: So we will remove that and put the two records in evidence.

THE COURT: I am about ready --

MR. KANE: It is very suitable, your Honor. We have a few exhibits we want to put in, but we will put them in during the recess.

THE COURT: I have a number of questions to

ask. Will Mr. Stroud be back?

MR. KANE: He will be the first witness after lunch.

THE COURT: We will adjourn until 2:00 o'clock.

The reporter handed me this morning an interesting piece from Time Magazine, the current edition. I don't know whether you have all seen it. Perhaps you would like to look at it. I think you are entitled to know what I know.

All right, 2:00 o'clock.

(Luncheon recess.)

AFTERNOON SESSION

1:45 P.M.

S T E V E N A R T H U R S T R O U D, resumed.

DIRECT EXAMINATION (CONTINUED)

BY MR. KANE:

Q This Arica Chronicle which was marked Defendant's Exhibit M this morning, you testified about the portion on Psychocalisthenics.

I notice that in that portion it says: "Enclosed is a copy for the houses."

What material was enclosed? What material did you give to the houses on Psychocalisthenics?

A That's the indications for the Psychocalisthenics

Q Are indications written instructions on how to perform Psychocalisthenics?

A Yes, they generally come out in the form of manuals; sometimes they come out in Xerox copies of typed pages which are stapled together.

Q I hand you an exhibit which has been marked Defendant's Exhibit X for identification. Would you identify that Defendant's Exhibit X for the record, please?

A This is a portion of a 40-day training manual.

Q What portion is included there? Do you have a cover page?

A I do have a cover page.

Q What is the next sheet?

A The next sheet says: "Copyright Arica Insitutes of America, Inc. 1973, all rights reserved, including the right to reproduce this book or portions thereof in any form."

Q And the next sheet?

A This is the registration sheet. I remember this because I delivered these manuals around, some of them, and it's the sheet -- the person who gets the manual signs for it with their name and the date when they took it and at any time they are responsible for producing that manual.

Q And what are the next succeeding sheets right after that one?

A It says: "Schedule of exercises contained in the 40-day training."

Q Is that in the nature of a table of contents of this 40-day training manual?

A Yes, it is a table of contents.

Q Does it indicate a section on Psychocalisthenics?

A Yes, pages 69 through 91.

Q And thereunder attached do we have those pages 69 through 91?

A Yes, we do.

Q And what is the purpose of those pages?

A Those are the indications for the Psycho-calisthenics, for how long to do the exercises contained in the series.

Q And what distribution was made of those pages in your organization in the summer of '73?

A They were sent to places which had authorized trainings, where the manuals would be relevant.

THE COURT: The second page, I gather it is the second page which talks about copyrights, I dont know whether I need it but it's not in here.

MR. KANE: All right, your Honor. This is it?

THE COURT: That isn't what he read.

MR. KANE: I will conform it.

I would like to offer Defendant's Exhibit X in evidence.

xxx (Defendant's Exhibit X was received in evidence.)

MR. KANE: And Defendant's Exhibit Q, which is the Cable TV Guide, I would like to move that into evidence.

MR. DUBAN: No objection.

xx (Defendant's Exhibit Q was received in evidence.)

Q I take it this word "indications" is a word which is used within Arica to describe written instructions for your various trainings?

A Yes, it is the precise steps of what to do with that exercise if you are teaching it.

Q I hand you an exhibit that has been premarked Defendant's Exhibit U.

Would you identify that exhibit, please?

A This is a Psychocalisthenics chart.

Q What use is made of that chart?

A Well, this chart is a short form of the indications that we use for general instructions. People who are taking our Psychocalisthenics class could get a copy of this chart, people could walk into our store and buy it. I have one on my wall occasionally I use to check the foot positions to make sure I am doing it technically correct.

MR. KANE: I would like to offer Defendant's Exhibit U into evidence.

MR. DUBAN: I have no objection.

xx (Defendant's Exhibit U was received in evidence.)

Q In terms of Arica's advertising and promotion

effort, are you in a position to estimate how much has been expended in advertising and promoting portions containing the Psychocalisthenics exercises from mid-'73 when Psychocalisthenics was introduced to date?

A I could give you a minimum-maximum range that I know we spent that much and no more than this, but I couldn't give you precise figures.

Q Do what you can and then qualify it as you wish.

A Since 1973?

Q Mid-'73.

A I would say a minimum of $200,000 in advertising, $100,000 in promotion, $300,000 altogether absolute, as an absolute minimum.

Q Does Arica Institute, Inc. make an effort to control the use to which its programs or its names are put?

A We certainly do.

Q I call your attention to the second page of this Defendant's Exhibit M, the Arica Chronicle, where under the heading "Legal and Financial" there is a sentence that says, or two sentences:

"We are concerned about unauthorized people teaching Arica work, especially the 40-day graduates. If you hear of anybody teaching Arica work who is not a member

of the school or if you hear of anybody doing unauthorized Arica workshops, contact the General Service House immediately, attention David Parker."

What was the General Service House?

A General Servide House was the name of our central administrative and control body in the school at that particular time.

Q Did you personally have some responsibilities or activities in this quality control area?

A Yes. I am the vice president in charge of programs. I am responsible for all staff training, teacher training. I am a kind of an enforcer, let's say, if people absolutely refuse to stop teaching unauthorized programs. Then I would speak to them personally if they were in the school; I would write them letters; and if necessary I would go visit them.

Q How do you maintain a knowledge of what is being taught under the auspices of Arica around the country?

A Well, under the auspices of Arica it all runs through the middle of Arica. If somebody has a course that is different from our normal course, they will send in the schedule, how long they do each exercise, and then we approve it or disapprove it there or sometimes they will request us to make up a course, and we do it. But

in all cases they have specific authorization to do a standard course on an on-going basis or they have to get it approved in advance of when they do the course or when they advertise the course.

Q Have you had any personal association with the people who give Arica trainings around the country?

A Yes, with all of them.

Q What kind of association?

A I have trained every authorized teacher in the school, two thousand of them.

Q I hand you an exhibit which has been premarked Defendant's Exhibit W.

Can you identify -- I see there are two sheets of paper there, and the bottom one is dated April 18, 1975. Would you identify that first and then identify the second?

A I am sorry. I didn't understand the question.

Q Would you identify this Defendant's Exhibit W, referring to the sheet dated April 18th first?

A Yes. That is a letter written to General Service House from the Detroit Teaching House concerning a woman who had taken some courses, including Pyshocalisthenic: through the Detroit Teaching House, was in a teaching situation, and started teaching portions of the Psycho-

calisthenics as part of their school's curriculum.

Q The top sheet dated May 20, 1975?

A That is a response drafted from the General Service House to the Detroit Teaching House on that subject.

Q Were you familiar with this response when it went out?

A Yes, I am the one that wrote it.

MR. KANE: I would like to move the admission of Defendant's Exhibit W.

MR. DUBAN: I have no objection.

xx (Defendant's Exhibit W was received in evidence.)

Q I hand you a certified copy of the file history of trademark application 50658, which has been premarked Defendant's Exhibit V, and ask you if it's true that Arica has filed to register its mark Psychocalisthenics?

A Yes, it is true. It's been granted, as far as I know.

MR. KANE: This certified document brings that government file up through June 1, 1976, the second and third sheets from the end of the document being the formal notice of allowance from the U. S. Patent and Trademark Office, and it is a certified document. I would like to move its admission into evidence.

MR. DUBAN: I have no objection.

xx (Defendant's Exhibit V was received in evidence.)

MR. KANE: One other item that has not been formally moved into evidence is Defendant's Exhibit L, the newspaper clipping book which Mr. Stroud testified about this morning.

I would like to move the admission of that document into evidence, please.

I have a listing of the articles therein which might be marked Defendant's Exhibit L-1. Let me mark this list of exhibits in L as L-1.

xxx (Defendant's Exhibit L-1 was marked for identification.)

MR. KANE: I move them both.

THE COURT: Mr. Duban, do you have any objection?

MR. DUBAN: No, sir.

xxx (Defendant's Exhibits L and L-1 were received in evidence.)

THE COURT: I see in Exhibit V that Kane, Dalsimer, Kane, etc. is composed of all members of the bar. It is a big, large firm.

MR. KANE: There is a punctuation problem.

THE COURT: If you look at the fifth page, you

will see that is what it says. I am prepared to assume you mean all members of the bar except Mr. Duban.

MR. KANE: Stipulated.

Q I hand you two booklets that have been marked Defendant's Exhibit Y and Defendant's Exhibit Z, and would you identify them independently for the record, please?

A Defendant's Exhibit Y is a copy of the Arica individual daily routine. It's a manual which we publish of a routine of exercises taking from two to three hours a day, depending upon which of the routines you wish to use that people can do in the daytime.

Q Does it suggest Psychocalisthenics?

A Well, it's part of the routine.

Q I refer to pages 2, 3 and so on of Exhibit Y.

A Yes, Psychocalisthenics is a part of the routine, of all the routines. If you will notice, there are different routines you can do. They get harder as you go on, but Psychocalisthenics is part of all of them.

Q When was this book published?

A This book was published -- well, I think it's this year, right around the beginning of the year.

Q I think it is rather recent.

Now turning to Defendant's Exhibit Z, when

was that book published?

A As this book, it was published around the same time that this one was, perhaps a little before. The Arica Birth Ceremony has been in manual form and things like that for several years.

Q In Exhibit Z, the Arica Birth Ceremony, do you have a Psychocalisthenics reference in there? I think it is about the third page in.

A Sure. We have the sequence of Psychocalisthenics which we recommend that pregnant women do.

Q And are they characterized as -- what is the headline on that?

A It's called "Pregnant's Psychocalisthenics exercises."

MR. KANE: I move the admission of those Exhibits Y and Z.

MR. DUBAN: No objection.

xxx (Defendant's Exhibits Y and Z were received in evidence.)

Q Through the testimony, through the record, there has been mention of Psychocalisthenics and other Arican names.

Can you give some information to the Court as to the significance of the names in terms of Arica's over-

all objective?

A Arica is a school which has a system that we teach. It's a process that people can go through in various forms. They can come from the body or from the mind or what program they come into. But it's a particular and a unique knowledge.

In many instances it was developed in Arica, it doesn't exist outside of Arica. We had a good deal of problem in the beginning. People thought we were Sufi's. It's a Middle East sect. That's because the founder of our school had traveled in the Middle East as well as other places.

With a Gym, for instance, it's very confusing to call it "Gym." People associate it with a series of exercises to build muscle and make a football player-type body. It is not that.

So in all cases we try and come up with a name that particularly identified what we do and it doesn't have associations so that people will think it is something else. We don't want to misrepresent ourselves and we do want to identify ourselves. That's why we choose those names.

Q Is word-of-mouth publicity important to the activities of Arica?

A We haven't surveyed everybody. We have

surveyed 40-day training graduates and people who come to those programs and the question of: How did you hear about Arica? What brought you here.

Over 50 per cent, I think it is in the 50-60 per cent, I seem to recall, came from a friend. Somebody told them about Arica and they came.

The second is from reading articles, books and advertising.

Q Are you concerned about the continuation on the market of the Steven West book Psycho-Calisthenics?

A Yes, I am totally concerned about it.

Q Why is that?

A Well, internally it's going to force us to change the name of Psychocalisthenics, to re-educate 2,000 teachers plus a thousand that we are going to certify this summer, to change all our manuals, our brochures. It's an enormous problem inside.

OUtside the school, we have gone to a lot of trouble to establish Psychocalisthenics as being a particularly unique form of physical exercise which breaks down tension, which relaxes the body and which focuses with breathing.

We are not a rich organization. We have done this as the beginning. We can't go into a big objection

on we are changing our name but not our stripes kind of thing. At the same time we need to be able to identify what we do as what we do. Otherwise -- we have to compromise ourselves then with the public because there are Psychocalisthenics courses going on and without putting a judgment on them, we simply don't have any control whatsoever over them and don't want to take responsibility for the impression or results in another person or what happens there and we will inevitably get that responsibility.

It could cost us students, it could cost us students because we have advertised for some time Psychocalisthenics a lot of people have taken it. From advertising it is well-known. People don't see an advertisement and rush out to do things. We have psychocalisthenics in the Village Voice on a weekly basis for some years. Over these years people hear about Psychocalisthenics and maybe they check it off and,"yeah, I am going to do that one day."

One day they see a big ad - Psychocalisthenics - and they say, "I wanted to do it and I am going to do it" and they rush off to do it and it turns out to be Mr. West's Psycho-Calisthenics instead of ours.

I don't have a position. They should do Mr. West's Psychocalisthenics if they want to do Psychocalisthenics

but they shouldn't do it if they want to do ours, or vice versa.

THE COURT: Your ad says Arica.

THE WITNESS: People don't talk about Arica Psychocalisthenics or Arica 40-day training. They say, "I took 40-day training; I took Psychocalisthenics."

THE COURT: Can't you protect yourself by always calling it Arica Psychocalisthenics?

THE WITNESS: There is a problem with that.

THE COURT: Tell me the problem.

THE WITNESS: The main problem we see with that is what we do is a particularly unique thing.

THE COURT: Defendant's Exhibit Q has to do with relevision programs and it says for six days a week at 10:30 there was a program about Psychocalisthenics but it says Arica Psychocalisthenics.

What is the problem about calling it Arica Psychocalisthenics?

THE WITNESS: The problem is it sounds like there is one thing called Psychocalisthenics and Arica has one variation and Mr. West has another variation.

THE COURT: Which I take it is true.

THE WITNESS: It is not true because Psychocalisthenics -- if you read Mr. West's book and compare it

with --

THE COURT: It is a different form of Psychocalisthenics?

THE WITNESS: Psychocalistneics to us --

THE COURT: Is Arica Psychocalisthenics.

THE WITNESS: It's the name of those particular 22 exercises that we do.

THE COURT: There are chocolate bars and chocolate bars and they are all different. There is a Hershey chocolate bar and a Nestle chocolate bar and they are quite different in taste and composition, but people don't buy a chocolate bar, or sometimes you don't care, you just buy a chocolate bar, but people usually buy a Hershey chocolate bar or a Nestle chocolate bar or something else.

Why can't we have both Arica Psychocalisthenics and West Psycho-Calisthenics?

THE WITNESS: Because they are not the same thing.

THE COURT: They are different names. Hershey and Nestle make different chocolate bars, they are not the same thing.

THE WITNESS: But they are both chocolate bars. We are dealing with a chocolate bar and soda pop

here.

MR. KANE: We are not. The question is what is the generic. The generic is mind service, human potential movement, if you will. There is a market out there for people interested in human potential, people interested in taking courses, and over the years since '73 thousands of those people have been told there is a course they can take that is called Psychocalisthenics. Some of them do perceive it as Arica Psychocalisthenics, no doubt about it. Many thousands more perceive of it as Psychocalisthenics. To them it is a Hershey bar. They know they can get many mind science courses. This particular chocolate bar they want is from Psychocalisthenics. It's their Hershey. They use Psychocalisthenics as the name to identify it from any other courses in the mind science field, and for years Psychocalisthenics has identified only Arica.

THE COURT: It's different from est?

MR. KANE: Exactly. est is a trademark. Only those fellows can call their courses est. We have heavy evidence coming in this afternoon on the same problem.

That is all for Mr. Stroud.

THE COURT: Where does the name Psychocalisthenics come from?

THE WITNESS: Oscar Ichazo.

THE COURT: How do you know that?

THE WITNESS: I was at a meeting where he said we have to find new words for all our exercises. For instance,"the Arica Gym, Psychocalisthenics, I like it very much." It wasn't finalized then.

THE COURT: Where was that?

THE WITNESS: That was in his house, which at that time was on West 88th Street.

THE COURT: When?

THE WITNESS: 1972 -- it was just before we almost shut -- January, February, March, 1972, is my earliest recollection. It was in process and talked about for over a year after that.

THE COURT: At about the same time Mr. West also came up with the same name. Do you suggest that this was coincidence? I don't want you to suggest if you don't know. You just don't know?

THE WITNESS: I don't know. I first came in contact with Mr. West and the term some months ago. I have no idea.

THE COURT: There is evidence he was using the word at about the same time, 1972.

THE WITNESS: March, April, May, June, July,

I suggest if anybody heard it from anybody, it is probably in the time sequence. He had more opportunity to hear it from us.

THE COURT: He says he didn't.

THE WITNESS: So do we. I didn't hear it from him. Oscar was never in contact with him that I know of. I don't know how he could have, but I can't say.

THE COURT: Mr. Duban.

CROSS EXAMINATION

BY MR. DUBAN:

Q Just picking up on the same thing, I would like to ask Mr. Stroud if he is absolutely sure it was March of 1972 when you first heard the name Psychocalisthenics.

A That's the first recollection I have, is the best I recollect of hearing Psychocalisthenics, yes.

Q March of '72, not '3?

A Yes, I know. You are going to go to my deposition.

Q As a matter of fact, that's a good idea. We took your testimony on May 21, 1976, you will recall, and was it your testimony:

"Q When, to the best of your knowledge, did you see the name Psychocalisthenics in print, whether through any of our brochures, correspondence, material,

etc.?"

And your answer was:

"A August, 1973, definitely I saw it in print."

A Yes.

Q So you are telling us that there was over a year's time elapsed between the time that it was first conceived to the time it first became printed?

A Sure. You have to understand how we worked to come up --

Q Yes or no. Please, Mr. Stroud.

A Yes, it was over a year.

Q Is it also your testimony that you are absolutely sure that the name was conceived by Oscar Ichazo?

A At the time I recall a series of meetings in which the name came up and came up and came up, kicked off by Oscar saying he wanted us to come up with names. I am not absolutely sure that Oscar Ichazo came up with the name Psychocalisthenics. I am absolutely sure that I heard it from him.

Q Wasn't it just your previous testimony that, yes, the name came from Oscar Ichazo?

A Yes, but only in terms of my knowledge.

Q Do you know whether he coined it? Can you say for sure he coined it or that he did not hear it from some other source?

A No. Nobody can say that except him.

Q Where is Oscar Ichazo today?

A I can't say. He is in what is called a retreat. He has been there for four weeks now. In that time he goes into total seclusion. He does mystical workm meditations. I don't know what he does in that. But he leaves us instructions not to change anything until he gets back and then he goes. So I couldn't say where he is.

Q Let's get back to our deposition again. When you were asked a question: "Are you familiar with the term called Psychocalisthenics?', your answer was: "Yes, I am.

"Q When was the first time that you heard that word?

"A I will have to give you a period and I'll tell you the period, and that period would be February-March, 1973."

Is that your testimony today?

A I believe there is more -- no, it is not.

Q Is that your testimony today?

A No.

Q Were you mistaken today or were you mistaken when you gave this deposition?

A Neither one. You are leaving out a lot of things I said. What I was doing in the deposition at that time was making absolutely certain -- I didn't know what you were going to ask me, I hadn't thought about it a lot or anything like that.

Q But you were there, you heard the word?

A What I was saying here, if you will let me finish, is I was trying to pick a place which we could document which it wasn't going to be, "Oh, yes, I heard Oscar Ichazo say it."

I was picking formal circumstances where there was like an official series of meetings where the thing could be well documented on much more than my thinking and where I was absolutely certain.

Since giving that testimony, Elliot Dunderdame, who is in this court, reminded me of a series of meetings I had forgotten about. It was called book meetings. As soon as I remembered those meetings I started remembering what occurred in them, and that's the meeting I am referring to today.

Q So it is your testimony that after conferring with another person that you changed your mind as to the

date?

A No, sir, I did not confer with another person. It was a chance comment he made on the nature of a meeting, of reminding me that we had been together, and that provoked the memory of that meeting. I hadn't remembered that meeting before. It was a conversation, not a conference.

Q I show you your U. S. Patent Office trademark application, which is Exhibit V, and show you the second page thereof and ask you to read for us what is written after the heading "First use."

A "August 13, 1973."

MR. KANE: Your Honor, I submit this line of questioning is immaterial. We are not claiming a '73 date because that is the whole distinction of this case, when you make a public appropriation of your trademark. That is the law we both actually argued and we are arguing we did it in '73. There may have been conversations. Several of them have testified to it. We don't claim that as our date of appropriation. We can't prove it.

THE WITNESS: We published it and disseminated it in August, 1973. It's the first --

THE COURT: Your objection, Mr. Kane, if it is an argument, is well put. Of course, this is a document you offered and he is entitled to examine the witness about it.

A Anyway, it is the first time we have documentary proof we used it on that day and in a manner which I understand -- I am not an expert -- complies with trademark laws as opposed to somebody heard it said in a room. That is why I didn't want to say it on my own thinking. This one we can prove.

THE COURT: What are the words that are written under "First use"? I can't see it on my copy. Does anybody have a better copy? It looks as if the words are "As early as August 13."

MR. DUBAN: I can't read it either.

MRS. S. KANE: At least as."

MR. KANE: That is the form of this application. It says Arica used the mark at least as early as August 13, 1973.

THE COURT: Thank you.

BY MR. DUBAN:

Q Prior to the use of the word Psychocalisthenics, you also testified that the same or similar course was called Arica Gym.

A It was just called Gym, really.

Q It was just called Gym. O.K.

Do you feel that the word Gym had any value to Arica?

A No.

Q It didn't?

A No.

Q How long had Gym been associated with that course? Since its inception?

A No. That particular course, the Gym was modified a little bit to make that particular course called Psychocalisthenics. I do not know what it was called since its inception. It was called Gym when I came in contact with it.

Q When was that?

A That was in 1970.

Q So it had been called Gym since at least 1970 through 1973?

A Yes, and it started changing in '72, but in '73 there was a period of confusion when nobody knew what to call it, and in 1973 it was officially changed to Psychocalisthenics.

Q How many people were exposed to or took courses in Gym for the period that you were involved with this program?

A I will have to figure it up. This is a very approximate figure. About twelve to fifteen hundred.

Q And more people were exposed to the course or

took the course after the name change?

A Oh, infinitely more. Not infinitely, but lots more.

Q Why is that?

A We weren't very public before the name change and we weren't in very many locations and we were primarily doing exhausting, expensive trainings that not very many people came to.

Q So you were spending more funds for promoting and advertising it and developing it?

A Mostly for developing at that point and not so much for promoting and advertising.

Q But it was not because the name was changed from Gym to Psychocalisthenics that it became more popular?

A I couldn't say why it became more popular. We spread out. There are a lot of factors. Who knows why these things happen.

Q Did you testify that you were one of the founders of Arica in the United States?

A I said I was one of the original three people that incorporated it.

Q Does that mean the same thing as being a founder of it?

A I don't know. I mean I suspect it's a legal

term and I don't know the term.

Q Did you also testify that you were involved with seeing that trademarks were filed and copyright applications were made?

A In a general sense, I had a supervisory position. There were several lawyers who worked with us from time to time both in-house and out, and I was not responsible for seeing when they got filed. There was one period when I took over the Legal Department when Lyle got sick where I made an attempt to find out what was filed.

We would sit in executive committee and draw up lists of what we wanted trademarked or copyrighted or searched or things like that, but I didn't handle it after that point. It was only in deciding, yes, we wanted to go ahead with it that I was involved.

Q Do you have any idea how many trademarks you have applied for in the time you were working with Arica?

A No, I don't.

Q Would you say it is more than then?

A I couldn't say.

Q Less than ten?

A I couldn't say. I don't know.

Q Isn't it a fact that all of your materials that you presented today -- I will withdraw that.

I show you Defendant's Exhibit Y and ask you if you are familiar with it.

A Yes, I am. It's the daily routine book.

Q Will you turn to the second page and tell me if you have put a copyright notice on it?

A Cy "copyright notice" do you mean the "C 1973," that one?

Q Yes, I do.

A Yes, it's there.

Q Is the same true for Defendant's Exhibit Z?

A Yes, it is.

Q That also has a copyright notice on it?

A Yes, "C 1972, 1973, 1974, 1975."

Q What was Arica's purpose for putting copyright notices on its material?

A We want to copyright our material.

Q You wanted to protect your proprietary right in it?

A Yes.

Q You felt you had something proprietary, that you wanted to protect it?

A Yes.

Q You felt it was something special and you didn't want the rest of the world to appropriate it?

A I beg your pardon?

Q You felt that this material was something special and you didn't want the rest of the world to be able to use it, to appropriate it?

A No, I felt it was something unique and that it was designed to have a particular result and we wanted to make sure that we could continue achieving that result.

In addition, some of it can be dangerous, can be psychologically or physically dangerous, and we didn't want it going out under uncontrolled circumstances where it could do damage.

Thirdly, we had our good name to protect and we wanted to do that.

Q Of course, you are familiar with other Arica terms such as Opening of the Rainbow Eye?

A Yes.

Q Is that a trademark of Arica or could anybody else use it?

A So far as I know, it is a trademark of Arica when used in conjunction with a particular program which is called the Opening of the Rainbow Eye.

Q Could I open up a restaurant called Opening

of the Rainbow Eye?

MR. KANE: Objection, your Honor.

A I have no idea.

MR. KANE: These are legal questions.

THE COURT: Sustained.

Q Are you familiar with the Arica term Diamond Training?

A Yes. That's a vernacular term. We really call it The Cutting of the Adamantine Pyramid.

Q Is that a trademark of Arica?

A So far as I know.

Q Do you have any idea when that was trademarked?

A By formal application or by use?

Q Formal application.

A No, I don't.

Q Is the same true for Alpha Heat?

A So far as I know.

MR. KANE: Objection. The question is unclear. More than that, I believe it is beyond the scope of direct. I think the question whether the marks Mr. Duban is inquiring about, whether they are registered or not, is immaterial.

MR. DUBAN: I am trying to establish their idea or concept of what is a proprietary term with the

MR. KANE: I don't think that is a material point.

THE COURT: I will allow the question. Overruled. Alpha Heat, is that the one?

MR. DUBAN: Yes, sir.

Q Is that a trademark of Arica?

A Again, please let me say that I don't know what a trademark even is. I couldn't define it, the work "trademark," what that means legally.

Given that, I say, yes, it is a trademark of Arica, understanding I don't know anything about it. I don't know how I can testify this way. I have to say I don't know.

THE COURT: It is a word or phrase that you use?

THE WITNESS: Yes. I don't know if we have made a formal application.

THE COURT: I wasn't asking you about that.

THE WITNESS: O. K. Yes.

Q Does Psychocalisthenics describe this particular course that you offer?

A The Psychocalisthenics course?

Q Right.

A Yes.

Q And it is descriptive of the type of course that is given?

A It is the name of the course, it is the thing itself. It is like saying, "This is the witness box and this is the judge's bench."

Q Doesn't it describe what the object is?

A No, it names it.

MR. KANE: Objection. These are conclusions.

THE COURT: I am overruling your objection.

Mr. Stroud, are you saying what you described is a box?

THE WITNESS: Since you said that, I thought "the chair," of course -- yes, this could be a box, sure.

THE COURT: Is this a bench that is in front of me?

THE WITNESS: Yes. Now I look at it, it looks more like a desk.

THE COURT: So that a label is not necessarily a precise term but is maybe generally descriptive, is that right?

THE WITNESS: Well, it depends a lot on what is being described.

THE COURT: Let us get to our lawsuit. Psychocalisthenics to me means, maybe because I have learned

about it in the course of the lawsuit, but "calisthenics" I have known about since I was a kid. It's exercise, physical exercise. "Psycho" is a word, at least a prefix, which is often used to -- well, is used to denominate something pertaining to the mind.

THE WITNESS: That's true except this is not mind physical exercised, just physical exercises.

THE COURT: Then the "Psycho" doesn't belong in the name.

THE WITNESS: Not if it is a description of the exercises. We could have called it Greeble physical exercises.

THE COURT: Or the Stroud.

THE WITNESS: Or the Stroud Calisthenics, or something like that.

THE COURT: I thought this part of the program was designed to improve your state of mind.

THE WITNESS: No. The Psychocalisthenics was not designed for that of all our program. It does have effects in the mind. It has effect in the emotions, but we don't say --

THE COURT: Emotions are the mind.

THE WITNESS: We consider it the heart and the circulatory system and the mind we consider the

intellect. It does say emotional, physical. Calisthenics, something like that. The thing in coming up with these names is coming up with a name that doesn't associate with something else. It's like just calling it calisthenics, what I said before. They are both physical exercises, but it's so different because calisthenics builds up muscles for the most part and our tears down muscles, smooths out muscles. People get more smooth and graceful. That's why we changed it from Gym, because when people hear that, then they think, "Aha, it is this other thing which I did in high school all the time."

So we tried to come up with something which has no association. Then we can identify it as our particular thing that we are doing.

THE COURT: In your application for the Patent Office you say: "Providing instruction and discipline, physical and intellectual exercises."

THE WITNESS: There are no intellectual exercuses. I don't know what to say on that.

THE COURT: There aren't any?

THE WITNESS: Basically, you are moving your body and breathing.

THE COURT: It says in your application that the services you provide are discipline, physical and

intellectual exercises.

THE WITNESS: The services that Arica provides or the services that Psychocalisthenics provides?

THE COURT: This is Arica.

THE WITNESS: Arica provides many intellectual exercises.

THE COURT: This is in connection with your application for the trademark Psychocalisthenics.

THE WITNESS: Is that pertaining to what Arica does or what Psychocalisthenics does is what I don't understand.

THE COURT: I take it it has to do with this application which is for this word Psychocalisthenics.

THE WITNESS: I would think it did, too. I don't know. I absolutely don't know.

THE COURT: Are you saying that Psychocalisthenics as provided by Arica has nothing to do with intellectual exercises?

THE WITNESS: Yes, I do say that. It does have something to do with intellectual results, but it is not your intellect which is exercising, it is your body which is exercising.

THE COURT: The effort is to try to improve the intellect, is that right?

THE WITNESS: But through such things as improve blood circulation.

THE COURT: For example, this ad which we passed around in the courtroom talks about improving the mental clarity.

THE WITNESS: Yes.

THE COURT: Isn't the phrase, the word, prefix "Psycho" very appropriate to be used for your services?

THE WITNESS: If we are going to go on that reasoning, I think we would have to then say psycho-relaxovitalitoemotional.

THE COURT: I don't think you need all of them. I am just suggesting "Psycho" is not an inappropriate prefix.

THE WITNESS: No, it is not inappropriate.

THE COURT: I would suppose that you could think of inappropriate prefixes. How about judicial-calisthenics; would that be an appropriate prefix?

THE WITNESS: It would be appropriate if we were doing it here.

THE COURT: I guess you had better not get started on that.

Go ahead, Mr. Duban.

BY MR. DUBAN:

Q Is it your testimony, then, that as early as 1972 the term Psychocalisthenics was used by Arica?

A Inside Arica verbally.

Q Verbally?

A Yes.

Q There was nothing committed to writing, as you say, until the middle of 1973?

A It is the first time that I can say it was written, yes, definitely published and transmitted across state lines and that whole thing.

Q You are familiar, of course, with these two exhibits that I just showed you, Defendant's Exhibits Y and Z, and I just ask you to look at the copyright notice which you read and would you please read it again.

A "C 1972, 1973, 1974, 1975, Arica Institute, Inc."

Q Does this Exhibit Y contain a reference to Psychocalisthenics?

A Yes, it does.

Q It does?

A Yes.

Q Would it be fair to assume that since you placed in the copyright notice 1972 that this word was

used in print in 1972 or is the copyright notice incorrect?

MR. KANE: I object.

THE COURT: Let's put the question in terms of "Do you know."

Q Do you know whether the word Psychocalisthenics was used in print in 1972?

A No, I can't say it was. I know that it was used in that one in August, 1973.

Q But August, 1973, is your earliest knowledge of it?

A Seeing it in print?

Q Yes.

A Yes.

Q Then you never saw either of these documents before August of 1973, Exhibits Y and Z?

A No. They weren't in existence in 1973. They are quite recent.

Q They are quite recent?

A Yes.

Q It carries a copyright notice of 1972 on it.

MR. KANE: I object, your Honor. It may have material from 1972 and therefore it requires an earlier date.

THE COURT: Sustained.

Q Were you present in this courtroom when Morris Squire testified?

A Yes, I was.

Q And do you recall when he was asked in substance whether the word Psychocalisthenics or Gym had any real meaning to him and he testified if it was called Arica Applesauce it would be the same to him as long as it was Arica?

A I don't recall him saying those exact words that it would mean the same to him. I think he said he would have come to it if it was called Arica Applesauce.

Q Which means if it carried the name Arica, that would have had the most meaning to him?

A He never said that that would have had the most meaning to him. You said that.

Q If he would come to it if it was called Arica Applesauce, then it is obviously Arica that has the most meaning.

A I don't know what is obvious to Morris Squire.

MR. KANE: I object to a question which is arguing with the witness.

THE COURT: Yes.

Q Are you familiar with the origin of the exercises used in your Psychocalisthenics?

A Yes.

Q And what is the origin?

A Well, I have to sketch a little background history because they were invented.

THE COURT: I am sorry, Mr. Duban. I didn't get the tail end of your question. Are you familiar with the origin of what?

MR. DUBAN: Of the exercises contained in Psychocalisthenics as used by Arica.

THE COURT: As what?

MR. DUBAN: As used by Arica in its Psychocalisthenics courses.

THE COURT: Go ahead.

A They are intrinsic to Arica with the exception of four particular exercises in there which have been slightly modified from hatha yoga. The rest of them were invented entirely within Arica.

Q Does the name George I. Gurdjieff mean anything to you?

A Yes.

Q Who is he?

A He was a Russian teacher who died around 1950. He came on one tour of the United States. He trained in the Middle East and then he went and did trainings of

a mystical nature primarily through eastern Europe and Russia.

Q Do you have any knowledge as to whether any of the Arica exercises or programs were fashioned after his program?

A No. I would say, if you are dealing with that, Arica isn't fashioned after another program. It's not like a remodeling of something Gurdjieff would do. In the traditions of where knowledge comes down, I would say Gurdjieff and Oscar Ichazo have been connected with the same sources but in no sense could you say that Arica is any imitation of Gurdjieff's work. I mean it's like saying Jesus Christ is an imitation of Moses.

Certain things are truth. Anyone can approach the truth from any angle.

Q In your Defendant's Exhibit L, which is a collation of newspaper clippings, one article which is on page 16 which appeared in the Village Voice on January 27, 1975, contains a statement that "Gurdjieff established in a chateau outside Paris the institute for the harmonious development of man which is a model for Oscar's Arica Institute."

Would you agree with that statement?

A No, not at all.

Q You would not, you feel yours is unique and nothing was borrowed from Gurdjieff?

A That ours is unique? I am not sure if anything was borrowed from Gurdjieff. Some of the terminology is the same. Eurhythms, Gurdjieff used that word, but it wasn't borrowed. It is not the same eurhythms Gurdjieff used.

Q Is eurhythms an Arica word or was it in prior to Arica's use?

A I don't know.

Q Today if somebody mentioned the word "eurhythms" to you, would you associate it with Arica or someone else?

A Arica. I would associate it with Arica because I trained in eurhythms in Arica and I have that association. I could have associated with it outside.

Q You would associate it with Arica but that wouldn't preclude the fact that it was used by Gurdjieff?

A I suspect it was used by Gurdjieff, that word.

Q So then, just because Arica uses it today and it is associated with Arica, that does not preclude the possibility of somebody else having used it?

A Nothing precludes the possibility of anything.

MR. DUBAN: I have no further questions, your

Honor.

MR. KANE: Nothing more of Mr. Stroud, your Honor.

THE COURT: Mr. Stroud, would you come back for a moment, please.

EXAMINATION BY THE COURT:

Q In connection with the last two or three questions that were asked, did I understand that eurhythm is spelled e-u-r-h-y-t-h-m?

A E-u-r-h-y-t-h-m.

Q No "e" after the "th"?

A I don't know.

Q We have had some talk about eurhythm. What does it mean?

A The dictionary definition, I don't know.

Q What does it mean to you?

A To me it means a type of movement which isolates certain muscle groups for working, which works only those while holding others stationary. It is a system of working a specific combination of muscles.

Q Can you be a little more specific? Can you give me a precise example in terms of me?

A Sure. For instance, a eurhythmic movement would train you to move one shoulder while not moving any

unnecessary muscles in your body so that generally even though I move my shoulder my back starts to tense up and it goes down into my leg.

It is a way of separating out so only the isolated muscle will move.

Q If I reach out to pick up the glass, which I am doing, all I do is move the muscles I need to do that and I don't tense up in the rest of the body, is that about what it comes to?

A That is about what it comes to.

Q And this is a system which develops your ability to use the muscle that you need to use and to avoid tension in the rest of your body?

A You are close. It trains you to use the muscles by themselves, exactly what you say. Whether it makes tension or not is another thing. Ours is just to get the independent movement in the muscle.

Q Do you know what the derivation of the word is? Where does the "e-u" come from? "Rhythm" we all know about, but why "eurhythm," do you know?

A I don't know. I simply don't know.

THE COURT: For the last couple of days I have learned a lot of brand new words and it would be interesting to know the derivation of these words. I am

suggesting that Arica ought to put out a dictionary but it would be interesting to know.

For example, eurhythm, what is the derivation of eurhythm?

All right, Mr. Stroud, thank you very much.

(Witness excused.)

- - -

E R I C A J O H N S T O N, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KANE:

Q Miss Johnston, would you state for the record your education and early employment history?

A I was educated in private schools in Europe, both in England and in Belgium. I attended the University of London, where I read philosophy, and then I entered into a career in publishing at Houghton Mifflin Company in Boston, and then Alfred A. Knopf in New York.

Q When did you begin your association with Arica?

A On January 15, 1972. I registered for the second three-month training.

Q Did you take that training?

A Yes.

Q Over what period of time?

A For three months, from January 15 to April 15.

Q And thereafter what have your associations with Arica been?

A Well, for the next eight months I continued training. The later part of it I went into training to be a teacher in the Arica method. That was learning all of the exercises embodying them, performing them before video and then went out to Los Angeles to be in the first teaching house out there.

Q Were you on this video tape we saw this morning?

A Yes.

Q And since being qualified as an Arica teacher, have you conducted courses and parts of courses for Arica?

A Yes. The first 40-day training in Los Angeles, which was December, 1973. I have taught in all or parts of about twelve 40-day trainings, numerous lecture demonstrations, numerous Open Path weekends, the advance training, and myself continued to take all the internal trainings that Arica offered that we heard about yesterday.

Q If the first training you gave -- let me put it this way.

When did you first hear of the term Psycho-calisthenics?

A I first actually hear the term Psychocalisthenics in 1973, somewhat before the Chronicle came. We were out in Los Angeles, a group of us, and we would hear everything that was happening in New York by telephone, talking with our friends. There were constant rumors that this was going to happen and this training is coming and this change is coming.

Q By the Chronicle, are you referring to Defendant's Exhibit M?

A Yes.

Q Did you in due course receive that in Los Angeles?

A Yes, we received this.

Q At about the date it bears?

A Yes. Right after receiving this, I then moved to New York, to the New York Teaching House, and the first training that we gave there was in July, 1973, which had the new manual withPscychocalisthenics in it.

Q And did you conduct that training or part of it?

A I conducted the entire training, yes.

Q And did you teach Psychocalisthenics at that time?

A Every morning, yes.

Q And did you identify them as Psychocalisthenics?

A Yes.

Q Each day?

A Each day.

Q And what month and year was this?

A This was July, 1973, and continued on all through until 1974.

MR. KANE: Let me mark this red notebook as Defendant's Exhibit AA.

xxx (Defendant's Exhibit AA was marked for identification.

Q I hand you a copy of this Defendant's Exhibit AA and I would like you to identify that article on page 1.

A This was an advertisement, The Mosquito That Bites the Iron Bull, that I saw in a full-page ad in The New York Times in the fall of 1971.

Q Was this the first Arica advertisement, so far as you know?

A Yes.

Q And it was soliciting students for what?

A For the three-month trainings that were taking place at the Essex House Hotel.

MR. KANE: Let me just say for the record

on page 5 of this exhibit there is a blank space. That is because we removed from page 5 what became Defendant's Exhibit T, the Boston mailer that Mr. French testified to this morning.

Q Will you turn to page 6 in this exhibit. Let me ask you about page 1 before we go.

A I was looking for eurhythms in here. I think it's in here.

Q The question I was going to ask you is, is Psychocalisthenics in this Defendant's Exhibit AA on page 1?

A No.

Q Why not?

A Psychocalisthenics came in as a name for these exercises later.

Q So it wasn't being used at the time this advertisement was run?

A No, and it wasn't being used in my training.

Q I will now refer you to page 6 of this exhibit, Defendant's Exhibit AA.

What is that item on page 6 of the book?

THE COURT: I see kinorhythm; there is also pneumorhythm. I haven't been able to find eurhythm.

THE WITNESS: Here is one eurhythm I was going to show you. (Witness demonstrates.)

You are only exercising this muscle. Now try it with this one. It is much harder by the time you get to the little finger.

What the exercise is showing is that originally the muscles like in a child are independent and they can move very flexibly. This is a very good exercise for writing. Then during the course of time muscles get tense and can't function alone. Eurhythm releases muscles. When you write, the muscles start to get tense.

THE COURT: What do you do if you dictate instead of write?

THE WITNESS: Then you do the mantrums.

THE COURT: Oms?

THE WITNESS: There are hundreds.

THE COURT: Do you want to turn to 6?

MR. KANE: Please, your Honor.

BY MR. KANE:

Q What is that item on page 6? Do you have it?

A The Boston one?

Q It is entitled "Arica Release." That's it. Are you familiar with that document on page 6?

A Yes.

Q What is it?

A This is a paper that was put together by the

Arica administration on Arica.

By the time this came, which was 1973, there was considerable interest in Arica and what it was and there was a need to describe something of what we were doing. It is the general background of what Arica was, what it did and what it was for.

Q At page 3, does it mention Psychocalisthenics?

A Yes. Here it is talking about the curriculum in Arica, including material and it includes here Psychocalisthenics in inverted commas.

Q And what distribution did this release receive?

A I am sorry. I really don't know.

Q Turn to page 8, if you would, please.

A Yes.

Q At page 8, what do you find?

A Here is the first, as it were, national brochure.

Q Who prepared this?

A The General Service House.

Q This document was prepared by the General Service House, which is the central administration of the Arica organization?

A Yes.

Q Could you briefly describe this brochure in terms of these different column headings that it has?

A This brochure provided information, general information, again about the school, about who we were and what our work was.

Q Does it describe Psychocalisthenics?

A Yes, and it describes the programs that we were offering at that time, 40-day training, and then you will see Psychocalisthenics.

Q Where wo we look? Which column is Psychocalisthenics in? What is the heading on it, Open Path?

THE COURT: The one with the paper clip. I have it. It is the fourth panel from the left.

A "Series of twenty exercises for integration of body breath and movement."

Q Two columns over there is a column entitled "40-day Intensive Training" followed by a listing of cities.

A Yes.

Q What do those cities represent?

A Those cities represent places where we have teaching houses that were giving the 40-day training that summer, the summer of 1974.

Q Did you participate in any of those trainings?

A Yes. I participated -- summer of 1974? Yes, I participated in the sense of setting up and visiting the 40-day training in Vermont.

Q Do you know that each of those 40-day trainings contain the section on Psychocalisthenics?

A Yes. Every 40-day training, the first hour of every day is Psychocalisthenics.

Q Finally, toward the back of the brochure is a column with no heading on it but an address in Amherst, Massachusetts, and then following a list of addresses down the page.

What does that represent?

A That is the listing of the Arica teaching houses with their addresses and telephone numbers that existed at that time, 1974.

Q Fine. Would you turn in this exhibit to page -- by "exhibit" I mean the whole book -- to the next page, page 9. That is Exhibit AA.

Can you identify that piece?

A Yes. This was a brochure that we designed at the New York Teaching House for a course that was just for women.

Q When was this course offered?

A October, 1974.

Q Does it have a section on Psychocalisthenics in it?

A Yes.

Q Do you find Psychocalisthenics mentioned in the brochure?

A Yes. It mentions again a system of physical exercises to integrate mind, body and emotions through the breath.

Q Turning, if you will, in this booklet, Exhibit AA, to page 23, there is a piece entitled "Arica New 40-day Training."

A Yes.

Q What is that piece?

A This is a brochure from the 40-day training from the summer of 1975 where the bulk of the material that was studied changed from what had been studied to the introduction of the hypernostic systems of the body. However, Psychocalisthenics remained in the training the first hour of every day.

Q Turning in this book, Defendant's Exhibit AA, to page 29 and in particular I call your attention to the legend in the upper right-hand corner, do you recognize that item at page 29?

A Yes.

Q What is it?

A This looks like an advertisement from the Village Voice.

Q It bears a legend Village Voice in the upper right, does it not?

A Yes.

Q And the date?

A August, 1975.

Q And is this an advertisement offering Arica courses?

A Yes.

Q And is Psychocalisthenics one of the courses offered?

A Yes.

Q Finally, turn to page 35 in this Defendant's Exhibit AA. Do you know what that item is?

A This is a letter from the program coordinator at Esalen Institute verifying that as far as they are concerned Psychocalisthenics was originated with Arica.

MR. DUBAN: Your Honor, I have to object to that. I haven't seen the document. From its description it sounds like it is going to be hearsay evidence.

THE COURT: I will take it, Mr. Duban. It is Just a statement by somebody who I know nothing about. I certainly at the moment don't think I can give it much weight. But here it is. I take it you don't doubt the authenticity of the document.

MR. DUBAN: Yes, your Honor.

THE COURT: You do or you don't?

MR. DUBAN: I don't know. It is just hearsay, as far as I am concerned.

THE COURT: I am talking about authenticity. Do you agree that somebody named Elaine Simon, who was a program coordinator of the Esalen Institute, wrote this letter? Have you seen it?

MR. DUBAN: I have not seen it.

(Document handed to Mr. Duban.)

THE COURT: I don't see how I can take it, Mr. Kane, if Mr. Duban is going to press his hearsay objection. I am prepared to take it for what it is worth --

MR. KANE: I think we can remove it. It was put in before I knew what plaintiff's case was going to be. It is not important to us any longer, so it will be removed. Page 35 is blank.

With that modification, I offer Defendant's Exhibit AA in evidence.

THE COURT: Do you want to take a few minutes to look at it?

MR. DUBAN: Yes, your Honor, may I?

THE COURT: We will take a short recess.

Mr. Kane and Mr. Duban, could I see you for

a few secons?

(Discussion off the record at the side bar.)

(Recess.)

xx (Defendant's Exhibit AA was received in evidence.)

MR. KANE: Your Honor, I would like to introduce my associates, Mrs. Siegrun Kane and Mrs. Virginia Richards of my firm.

The other lady is Paulette Kellner of Arica.

THE COURT: I notice in the firm name there are two Kanes. Which Kane are you, Mrs. Kane?

MRS. S. KANE: Neither one, your Honor.

THE COURT: I think you ought to arrange to deal with that problem.

BY MR. KANE:

Q We have just finished talking about the various programs that were offered under the auspices of Arica through its houses and 40-day trainings.

Besides trainings given at Arica houses and under your direct auspices, were there what are called off-campus Arica training courses?

A Yes, there were. For instance, a college would call us and ask us whether we would come and do a

demonstration, and we would design a program and go and do the demonstration.

In all these cases, we would present a few, if not all, of Psychocalisthenic exercises. These happened at colleges, universities, high schools, community centers, AHP conventions.

Q What is an AHP convention?

A Association for Humanistic Psychology.

Q Has Arica presented Psychocalisthenics at AHP conventions for some time?

A Yes.

Q Identify them.

A The one I was directly involved with was in New Orleans in August, 1974, where we presented several programs, and we did a program in the morning called Wake Up With Arica, which was Psychocalisthenics. This was the one that Morris Squire came to by the pool.

And then the most recent was the AHP Eastern Regional Conference in Atlantic City in April of this year, where Psychocalisthenics itself was entered as a program and was given by me.

MR. KANE: Would you mark this booklet bearing the legend "6th Annual Eastern Regional Convention of the Association For Humanistic Psychology, April 30-May 2, 1976"

as Defendant's Exhibit BB.

xxx (Defendant's Exhibit BB was marked for identification.)

MR. DUBAN: I have no objection.

xx (Defendant's Exhibit BB was received in evidence.)

Q Is that the Atlantic City program you have just testified to?

A Yes.

Q And did Arica present a Psychocalisthenics program?

A Yes.

Q Is it referred to in that exhibit?

A Yes.

Q Will you identify the page, if it is numbered.

A It is on page 30: E-25, Psychocalisthenics.

Q Do you know how many different Association of Humanistic Psychology meetings Psychocalisthenics has been presented at in the last three years?

A At least five.

Q Are you familiar with some Arica work with a Philadelphia drug and alcohol abuse program?

A Yes.

Q What do you know about that?

A This was a program designed especially for specialists in the drug abuse field, people who were engaged in therapy.

Again they approached us and asked us to design a program for them, which we did often for this kind of group. We designed a two-day program. Both days had Psychocalisthenics.

Q When was this program run?

A 1974, I think.

Q I have a file here which you have prepared. I will mark it Defendant's Exhibit CC.

xx (Defendant's Exhibit CC was marked for identification.)

Q There is Defendant's Exhibit CC. Does that refresh your recollection as to when the Philadelphia drug and alcohol abuse program work took place?

A Yes. It was 1974.

Q And what was your association with it?

A I had no direct association with it other than it was standard procedure that when one teaching house did a program, the information about that program would be spread around all the teaching houses. We would consult with each other on the telephone and get ideas from each other.

Q Generally speaking, what are the contents of this file we have marked as Defendant's Exhibit CC?

A There is a little brochure that was sent to the mailing list of people in the field for the program, and then on the third page is the schedule for the program, Friday evening and Saturday, Psychocalisthenics in the morning 10:00 to 12:00, and then on Sunday again Psychocalisthenics in the morning.

And then, which was again standard procedure, was a report that the teaching house made out on the program containing the public relations, the community relations, how the thing was scheduled, how it went, criticisms of what went well and what didn't go well. Just general evaluation of how the program was.

Then another example would be right at the very end, the last four pages. An example of things that happened all the time. Here in Washington the teaching house was approached by the coordinator of the rehabilitation for the alcohol safety action program coming to us to ask us for a program. This report would then go to New York, would be processed in New York and the recommendations would come back.

It also includes a schedule for the proposed training which again has Psychocalisthenics each morning.

Q Are you in a position to estimate the number of Psychocalisthenics courses that have been given at colleges and high schools at sponsored demonstrations over the last three years?

A It would have to be a real estimated guess based on the ones that I actually did give and that we were operating in this way for a year and a half, more than that, two years, with thirty teaching houses going everything. So it must be many more than a hundred different colleges and high schools and mental health places, community centers, city colleges that we would go and give those demonstrations.

MR. KANE: I move the admission of Defendant's Exhibit CC.

MR. DUBAN: No objection.

xx (Defendant's Exhibit CC was received in evidence.)

THE COURT: Mr. Duban, any questions?

MR. DUBAN: I have none.

EXAMINATION BY THE COURT:

Q Have you read Mr. West's book?

A Yes.

Q What do you think about it?

A I really don't quite know how to answer your

question.

Q Does it deal with the kind of Psychocalisthenics which Arica provides?

A Absolutely, absolutely categorically not.

Q Why do you say that?

A Because Psychocalisthenics is the name of a series of specific physical exercises that have a specific result. They have a specific result after you perform them one time, another specific result after you perform them for six weeks, as happens in the 40-day, and yet another result after you perform them for four and a half years, say as I do.

This result has been tested and tested and tested with thousands of people under very carefully supervised situations, for instance like myself, very carefully trained and very carefully tested.

So that we can guarantee your Honor if you were to do Psychocalisthenics one time I could tell you this will happen to you at the end and this will happen because hundreds of people have done that. The same for six weeks.

In reading Mr. West's book, Mr. West's book is a series of mental exercises and verbal exercises, whereby --

Q It requires the use of the body?

A Yes, but it's really oriented towards mental exercises in an analytical way. I didn't read it carefully word for word, but in gestalt of what is being talked about.

Psychocalisthenics that we know as Psychocalisthenics is a combination of movements coordinated with breathing that produces specific physical results that then generates specific intellectual and emotional results.

Q This may be an unfair question and if Mr. Kane thinks you shouldn't answer it, he will tell me so.

Do you think Mr. West ought to be permitted to go ahead with his method of dealing with the problems that he is trying to deal with? Do you have any problem with that?

A No, I think absolutely Mr. West should be free to experiment and examine the work that he is doing and continue with it, of course, but not under the name Psychocalisthenics.

Q Even if he came up with the name before you did?

A This I don't find acceptable, your Honor.

Q You mean that you don't find it acceptable he

came up with the name first?

A Mr. West and Mr. Duban produced --

Q You don't believe he came up with the name first?

A It doesn't make any difference to me who came up with the name --

Q You always tie Arica to Psychocalisthenics. Why can't you live together, he can call it West's Psycho-Calisthenics and you call it Arica Psychocalisthenics? Isn't Arica what makes your program great, because it comes from Oscar Ichazo from Arica? Isn't that what really makes it great and the people who have followed him and developed an organization? It isn't the name that makes it great, it is the people, it is the thought, it is the process, isn't that so?

Miss Johnston, I am arguing with you.

If you have anything you would like to say, fine. You see what I am getting at? Why can't you both live together?

A Because of the points that have been brought up and there is going to be more testimony in great depth on this. The question of confusion, the question --

Q What about my example, which is a pretty corny example? What about it? We all know a Hershey

chocolate bar and Nestle chocolate bar. I happen to prefer one over the other and I buy one rather than the other whenever I can.

A But I would counteract that --

Q So it is not so much chocolate bar, it is whether it is Hershey or Nestle, and why couldn't that be so with respect to Arica and West?

BY MR. WEST:

Q Have you had occasion to deal with the public in the sense it is the public that will take your courses?

A Yes, I do. I have dealt with the public continually.

Q Do some of them know you only by the name Psychocalisthenics?

A I think definitely yes.

Q Do some of them know you by your association with Arica as well?

A Yes.

Q But not all of them?

A Not all, no.

Q So if some of them who knew you only by Psychocalisthenics were confronted by Mr. West's book, would you expect them to believe there is an association between the book and you?

A Yes.

MR. KANE: That is all.

THE COURT: Thanks very much, Miss Johnston.

MR. DUBAN: May I ask one question?

CROSS EXAMINATION

BY MR. DUBAN:

Q Did you hear Mr. Stroud's testimony when he stated that Psychocalisthenics does not exercise the mind or psyche?

A Yes.

Q Do you agree with that statement?

A Yes.

Q Did you not just state that Mr. West's book and his Psycho-Calisthenics are mental exercises?

A That's my understanding from going through the book in a superficial way.

Q Would you say that the term Psychocalisthenics closer describes or identifies Mr. West's exercises or Arica's?

A Arica's.

Q Even though there is no mental exercise or no psyche exercise in Arica's?

A Yes.

MR. DUBAN: O. K.

(Witness excused.)

MR. KANE: There was marked, offered and received G and H. There were three exhibits marked at that deposition, 1, 2 and 3. I think they should also be offered as part of the record here, and I guess we will give them DD, EE and FF, DD being the book jacket from Mr. West's book, EE being an advertisement for Mr. West's book appearing at page 27 of New York Magazine for November 10, 1975, and FF being a page from a publication entitled Town and Village, of Thursday, April 1, 1976, page 5.

MR.DUBAN: I have no objection.

xx (Defendant's Exhibits DD, EE and FF were received in evidence.)

MR. KANE: With the Court's permission, Mrs. Richard will examine the next witness for Arica.

- - -

R O B E R T E. H O R N, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MRS. RICHARD:

Q Mr. Horn, would you briefly state for us your educational background?

A Yes. I have a Bachelor's Degree in history

from Valpraiso University, a Master's in political science, University of Washington, a variety of postgraduate courses and studies at Columbia University and New York University.

THE COURT: Where is Valparaiso University?

THE WITNESS: Indiana, Chicago.

Q What is your present occupation?

A I guess you would have to say I have several occupations. I am a research administrator and researcher in education, the kind of area where education and psychology overlap, and I teach at a variety of colleges from time to time. I have taught the past ten years at Harvard, at Columbia, at Sheffield University in England and at American University in Washington, D. C.

Q During the time since you have left school, have you had occasion to work on government research grants?

A Yes, I have. There are two kinds, one where I have simply worked as a consultant on other people's grants and others where I have been the principal investigator. I guess I will mention the two. I received two awards starting in 1967 through 1971 totaling about $160,000 from the U. S. Government to study information matching, which is a form of cognitive psychology

communication.

Q When did you first hear of Arica?

A I heard about it in 1970, to the best of my recollection.

Q And how did you hear of it?

A Well, a friend of mine had been to Esalen and Big Sur country and heard that a group of people were going to Chile, to Arica, Chile, to study with Oscar Ichazo. I became interested why 150 people who had done a lot of exploration were going there.

Q When did you become associated with Arica?

A I suppose my first association was meeting Oscar. I had a meeting to go to in which I had to deliver a paper in Rio de Janeiro in 1971, in June, and I took that opportunity to fly over to Arica after the conference, and Oscar was available and I met him at that time.

After that I took the second training, three-month training, that was given in New York starting in January of 1972.

Q And after taking the training, did you continue your association with Arica?

A Yes. I have done as many of the advance trainings as I could participate in, given my other occupa-

tions and duties.

THE COURT: As a student or a teacher?

THE WITNESS: As a student. I also participated in teaching and starting the Boston House in early January of 1973.

Also, in 1975 I was director of research for six months, helping a research department get started.

Q When did you first hear the word Psychocalisthenics?

A My best recollection of that is that it was either late 1972 or early 1973. It was December, 1972, perhaps. I was in New York at the time as a kind of teacher-administrator. I guess that would be the best description of my role at that moment.

And that was when -- I was accustomed to calling the exercises the Gym, and Psychocalisthenics came -- the word began to be used and I had to adjust my head to calling it that.

THE COURT: In June?

THE WITNESS: No, in December or January.

THE COURT: I thought you said something about June. I am sorry.

THE WITNESS: I may be talking too fast.

Q But your first hearing of the word Psycho-

calisthenics was in December, 1972, or January, 1973?

A Yes.

Q And this was a verbal situation?

A Yes, it was.

Q After that, when did you first see the word Psychocalisthenics in print?

A Well, I would imagine it must have been in that -- since I live in Boston, the Boston area, I am sure I got that brochure that was offered in evidence this morning. That presumably is when I saw it first in print.

MRS. RICHARD: I believe the witness is referring to Defendant's Exhibit P.

Q Had you ever heard the word Psychocalisthenics before this first hearing in December, 1972, or January, 1973?

A No.

Q Had you ever seen it in print?

A No.

Q Had you ever seen it in a dictionary?

A No.

Q Are you familiar with Mr. West's book?

A No. I saw an ad for it once, and last night as I got into town you showed me a copy and I flipped through it. I took about one minute.

Q Did you make an effort while you were in Boston before coming down to testify to purchase Mr. West's book?

A Yes, I did. I called the Harvard Coop. It is what we call the co-op on other campuses. It has a three-story book store, one of the largest in the world, and it wasn't there. I called Jordan March, both the downtown campus and the one out our way at the shopping center, and couldn't find it.

Q In your capacity as research director for Arica, did you have occasion to work on a grant proposal for the institute?

A Yes, I did.

Q Could you tell us the circumstances under which you took up those duties?

A O.K. It was in December of 1974. We had talked over the years that I have been associated with Arica about the importance of beginning the use of methods of science to prove some of the methods that Oscar was giving to us. I felt, personally felt, it was very important.

But various circumstances didn't permit us to get all of our organization together until about that time. Psychocalisthenics for us was a very good first

step into this world, I felt.

There are several physicians and researchers in various specialties who have done some Arica programs and I consult with them.

So we began talking at that time and decided that we would make a submission to the National Institute of Mental Health, which is a government organization, and I undertook to be the principal investigator on that project, the nominal leader of the project. It went under my name.

Q Can you identify this?

A Yes.

Q Is this the grant proposal you submitted?

A Yes.

MR. RICHARD: I would like to have this marked for identification as Defendant's Exhibit GG.

xxxx (Defendant's Exhibit GG was marked for identification.)

Q Mr. Horn, would you state the title of this grant proposal?

A Yes. It's called A Study of Psychocalisthenics.

Q Was this grant submitted to the National Institute of Mental Health?

A Yes, it was submitted at the end of February,

1975.

Q And do you know if any action has been taken in connection with this grant by the Institute of Mental Healty?

A Yes, there has been a sequence of actions. It was read by a committee of peers, that is, people in the community of the mental health field, various aspects of that. They read about 80 to a hundred of these that are submitted to that branch of NMHI. They select fifteen or twenty which meet their criteria, and they selected this study as one of those that passed in that quarter or half year when they read them.

So I was subsequently notified. Well, they came and talked to me a little bit about some of the parts of the design. So I knew that we were very close to being awarded this. Then in -- whatever the date is of the letter of acceptance that we have -- I think it was the end of '73 -- we got official notice of acceptance of it.

Q I show you this letter dated December 10, 1975, on the letterhead of the Department of Health, Education and Welfare, and ask you if that is the letter you are referring to?

A Yes.

MRS. RICHARD: I would like to mark this

letter.

xxx (Defendant's Exhibit HH was marked for identification.)

Q Going into the grant itself, Mr. Horn, how much money have you requested and has been approved by the government?

A We requested -- I will look at the budget -- I will give you the exact figure. The budget, which is page 5, we requested $236,133, which are direct costs. The government normally audits an organization close to the actual giving of the money and awards it an additional overhead percentage. For our kind of organization it normally runs 30 to 40 per cent. So the total amount of the grant would be $300,000, $325,000, $350,000.

Q Please tell the Court briefly what the purpose of this study is.

A Yes. It's to look at the specific exercises in the Psychocalisthenics and to place them in several community mental health situations, a high school, a drug center, an alcohol center and a mental health hospital, an outpatient clinic, and to look at what various outcomes of these different populations are when they do the Psychocalisthenics in conjunction with other therapy.

We wanted to look at what the community mental

health aspects, that is, the attractiveness of these specific exercises to a particular population, would be. We wanted to look at the psychological outcomes as measured by various psychological standards, psychological tests. We wanted to look at the physiological and psychological aspects.

Q I ask you to turn to page 20 of the grant application.

THE COURT: Did Arica have anything to do with your getting -- not "getting" but submitting this application?

THE WITNESS: I was director of research at the time I submitted it. It provided typists.

THE COURT: Director of research for Arica?

THE WITNESS: Yes.

THE COURT: What I am really getting at is, was this your own idea or did Arica stimulate you to do it?

THE WITNESS: I would have to say that the idea grew out of the group of us that were --

THE COURT: You said you worked with Arica?

THE WITNESS: Yes. I am vitally interested in the testing of that.

THE COURT: The point is that it is your association with Arica which led to this application?

THE WITNESS: Yes, I guess I would have to say that.

THE COURT: I suppose so. If you hadn't heard of Arica you wouldn't be interested in -- well, if you hadn't heard of Arica or Mr. West you wouldn't be interested in something called Psychocalisthenics, you might be interested in the field but not in that word?

THE WITNESS: Psychocalisthenics isn't descriptive of the field.

THE COURT: All right. What is it descriptive of?

THE WITNESS: To me it identifies these exercises. To my knowledge, and I only have the general reading that I do for this kind of thing, which covers the field, one has to be pretty well knowledgeable across the field. If there is other use of a term like Psychocalisthenics one has to identify that in a footnote, and it hasn't appeared. It doesn't happen.

THE COURT: What you are saying is that as far as you are concerned, all you know about Psychocalisthenics is something that Arica does?

THE WITNESS: Yes. It was very important in this grant, too. When you talk to the government in getting a grant, they are very interested in dissemination, not in

piling up information. One of the things we were able to say is, "Look, there are 1200 people out there who have been through the Psychocalisthenics program who are either volunteers or employed by Arica who are disseminating these exercises under this name."

So if we can show the benefits of these exercises, then these people represent a mental health delivery system.

THE COURT: I was about to say I don't see Arica mentioned in here, but I do.

THE WITNESS: It was mentioned incidentally as the origin of that, but that isn't what a reader does.

THE COURT: I am looking at it for a different reason.

THE WITNESS: I think it may be relevant to your question of Arica Calisthenics or not.

THE COURT: I am sorry, Mrs. Richard. Go ahead.

BY MRS. RICHARD:

Q Could we turn to page 20, Mr. Horn?

A Yes.

Q On page 20, is there a description of the general type of exercises?

A Yes.

Q Would you recite those exercises, not the long descriptions?

A The three categories at the top of the page?

Q Right.

A It says psychophysical exercises, mechanical exercises and hatna yoga exercises.

Q Are those the common generic terms used to describe those exercises?

A Yes.

Q When your grant is completed, will you be issuing a study on this subject?

A Yes, we are required to write a final report of our research and part of the application says we will disseminate it, we will undertake to write research articles and, if we think necessary, more popular type of articles, yes.

THE COURT: The letter from Dr. Kelty says if and when.

MRS. RICHARD: We are hopeful.

THE WITNESS: That is bureaucratese.

Q If your study should be disseminated, do you think the fact Mr. West's book is on the market will have an effect on the efficacy of your report?

A It certainly would be confusing to the readers

who are -- well, to identifying specifically this set of exercises, yes.

THE COURT: I don't know whether you were here yesterday. I take it you were not.

THE WITNESS: No, I wasn't.

THE COURT: Mr. West yesterday renewed a proposal he had made earlier, that he would be willing to -- what do you call it, Mr. West? -- issue a disclaimer --

MR. WEST: Yes.

THE COURT: -- with respect to anything that Arica is doing. He wants to get credit for his own work and not for Arica's work. He is willing to issue a disclaimer.

Don't you think this would be a possible solution to the problem that you are discussing right now?

THE WITNESS: I don't think people read too many disclaime We live in a very busy --

THE COURT: It depends on how broadly you publicize it.

THE WITNESS: I suppose. I doubt it. I don't think so. What I hear happening is a specific term which has been used by Arica in a sense somebody else trying to make it a generic term. That was my take on it.

MRS. RICHARD: I would like to have the two

exhibits marked in evidence.

Do you have any objection?

MR. DUBAN: I haven't seen them.

THE COURT: Mr. Duban, do you have any cross examination?

MR. DUBAN: I do, your Honor. I would like to have five minutes just to review the grant, if I may, your Honor.

THE COURT: You would like to take five minutes to look at it?

MR. DUBAN: Yes.

THE COURT: We will take five minutes.

(Recess.)

THE COURT: Is GG received?

MR. DUBAN: GG is accepted.

xx (Defendant's Exhibit GG was received in evidence.)

CROSS EXAMINATION

BY MR. DUBAN:

Q Mr. Horn, this grant application, this was made by Arica, correct?

A Yes.

Q Arica is the recipient or, rather, will be the recipient of the grant?

A That is correct.

Q And you are the director of research?

A Yes, I was at the time it was submitted. I am inactive now.

Q Has this grant actually been issued?

A I really don't know what you mean.

Q Have you received the grant?

A We have been notified of acceptance. We have not received any monies.

THE COURT: Is the letter from Kelty the only word you have gotten?

THE WITNESS: Yes. I have talked to him on the phone, too.

Q When you receive official notification of the grant, are you required to sign some form of a contract or a receipt book?

A Yes. Normally that takes place, and in this case that's true, that takes place when the money is about to be given.

Q Right.

A That is, a formal contract is made or formal grant.

Q Are you familiar with the terms of such contract?

A I am familiar with those that took place

between 1967 and 1971. I would have to look them up when they are current again.

Q Do you happen to recall in those previous contracts whether there was a provision that restricted your use of the study?

A No. I can give you my understanding of general policy of the government, that one wants dissemination of information that is gained through research supported by the government.

Q Am I correct in assuming that they would want this study dissemiinated to as many people as possible?

A Yes.

Q And free of charge?

A Yes.

Q Would you say --

A Or at low cost.

Q Would it be your opinion, then, that it would become part of the public domaine then?

A Well, that legal term, if it is, you will have to tell me what it is.

Q That it belongs to everybody now.

A The results of the research belong to everybody, not the name Psychocalisthenics, but the results of the research on it, yes. The government makes those

available.

Q Your position as a director of research probably enables you to explain to us some insight into Oscar Ichazo, is that correct?

A We'll see.

Q We are all very much impressed by all the things that he has done, but I myself would like to know where did he develop these concepts and programs?

A Where?

Q And how?

A And how. Well, from what he's told us in large group meetings, basically he has traveled widely. He is a person about my age, about 43 or 44, but started very early, before he was 20, and he had the opportunity, I guess I would have to say, the opportunity to meet very young some very serious and important teaching people, teaching masters in the mystical tradition, and he, as it were, passed along from one to another, letter of introduction sort of thing, and my understanding is that he learned a lot from those people and that he then went into a period where he saw what the situation is for humanity.

We all know what is happening on our planet. The human rase is essentially killing itself. And he saw that the opportunity -- he had to pass along his

experience and to develop a system out of that experience which may very well help humanity.

Q And he was developing ideas that he had encountered, philosophies of others that he had experienced and studied?

A I would guess so, yes. I would have to say something like that happened. I don't know the details.

Q Did his teachings become well-known only around 1970?

A Yes.

Q But he had been engaged in that prior to that date?

A Yes, off and on.

Q But it was only in 1970 that he really emerged as somebody that the people recognized or acknowledge?

A Yes. Well, people. I don't know. I don't know where you are leading with that. That's it for now. Yes.

Q In the course of your studies you must come across terms and names of many different subjects in this field.

A Yes.

Q Are you always able to attribute these

names to any one source or do they sometimes just come into being without any definition or origin such as the term called psychotherapy?

A I don't know the origin of psychotherapy.

Q It certainly is a word we all have heard.

A No question about it. It is used for many, many different things.

Q How about a term called isocalisthenics? Have you ever heard of such a word?

A No. I heard of isometric exercises, not isocalisthenics.

Q Have you ever heard of a word called aguacalisthenics?

A No. I presume it has to do with water.

THE COURT: How about aqua, a-q-u-a? Have you heard of either, aqua or agua?

THE WITNESS: No.

Q Of course, that doesn't mean there isn't such a word --

A I think I have -- I keep close enough track on the literature and what is happening in this general area of human potential transpersonal psychology to know if a word is receiving any current -- any general currency, used at meetings, scientific meetings, or in the popular

press or that sort of thing.

Q But it could be used in some obscure, some unacceptable spot that you would not have heard about?

A It could, sure. A lot of things happen in inaccessible spots that I don't hear about.

Q When you first heard about Psychocalisthenics, when was that exactly?

A When I first heard of Psychocalisthenics, it was the new name for the Arica Gym exercises, those specific exercises having to do with what we call the Arica Gym up to then.

Q And you first heard of it in connection with Arica?

A Yes.

Q Do you recall how you first heard of it?

A It was something like somebody saying, "Hey, we are going to call the Gym Psychocalisthenics from now on." It was a rumor rather than someone getting up in front of a group and saying, "We are going to call it Psychocalisthenics from now on."

Q Did anyone tell you the word was coined by Oscar Ichazo?

A No one said specifically to me at that time Oscar claimed it, no.

MR. DUBAN: Thank you. I have no further questions.

MRS. RICHARD: I have no further questions.

THE COURT: Thank you very much, Mr. Horn.

(Witness excused.)

- - -

xx (Defendant's Exhibit HH was received in evidence.)

M O S H E D A V I D O W I T Z, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KANE:

Q Mr. Davidowitz, what is your formal education?

A I graduated City College cum laude in '54 and I received a Bachelor of Religious Education from the Jewish Theological Seminary the same year. I attended the Jewish Theological Seminary for four years, received a rabbinical degree, have studied at Yale, University of Chicao, NYU Institute of Fine Arts and History, completing my doctoral work at NYU.

Q In what field?

A In communications, specifically media ecology.

Q What is it media ecology does?

A It deals with the total environment. Ecology deals with the environment, not only the natural evolvement.

THE COURT: How does media and ecology get together? I am curious.

THE WITNESS: The use of the term "ecology" specifically for natural phenomenon came up later than the word "ecology" which means environment, and our world is a world of information environment. So that the popular use of the term "ecology" deals with natural environment systems, but our whole industrial society is based upon the information process and that is what we study.

Q Afterward we will relate that to gestalt.

You mentioned you have taken rabbinical training.

A Yes.

Q Have you served as a rabbi?

A Yes.

Q Where and when was that?

A I was a rabbi in the Jewish Center of Island Park, which is in Long Island, from 1957 to 1959, and in Greenwich, Connecticut, from 1959 to 1966.

Q Do you have teaching experience?

A I have been teaching for lo these many years, close to twenty years.

Q What is your current teaching assignment?

A I am teaching a course now at New York University during the summer. I will be teaching full-time at Iona, which is a Christian college in New Rochelle, on the communication theory.

I will be teaching in the fall at Hofstra University in Long Island in such areas as futuristics, bible and art history and also awareness, which is one of the extensions of the humanistic psychologies.

Q Have you had previous responsibilities at New York University as a teacher?

A Yes. I have been teaching at NYU for a number of years.

Q Did you run a particular program or responsibility down there?

A For three years from 1971 to 1974 I was the assistant director of the Division of Continuing Education at New York University. We ran a very large program, and one of my areas of responsibility was developing and administering a program in humanistic psychology. We ran approximately twenty courses a semester, which is still going on, for something like 500 some odd students a term. It was one of the largest and probably still is one of the largest programs of its kind in the city, if not the country.

Q As part of this and as part of your earlier work, have you become familiar with disciplines in the humanistic psychology field?

A Yes, it was my job to know what is going on in the field, to be able to develop courses relative to it and on some occasions to actually teach the course in humanistic psychology.

Q What disciplines have you been familiar with?

A The humanistic psychologies generally deal with broad aspects of psychotherapies. Also, it doesn't really only deal with dysfunctions, namely, people who are mentally ill, but it tries to develop the potentials of people who are normal and who want to extend whatever their potential might be. So it deals with materials that would relate to purely cognitive, mental, intellectual systems., some that are body systems specifically, and mostly what seems to be happening in the last few years is an integration of what we generally call body-mind type systems, where you don't deal with the body and the mind or the body and the psyche as independent entities but integral units.

Q Are you familiar with Arica?

A Yes.

Q How long have you known of them?

A Probably from about 1973 or so.

Q In what connection did you first learn of them?

A As I was functioning in the field and I was developing my own particular interest in the humanistic psychologies, I heard of it probably from friends, those who have attended, those who have participated in it and those who are instructors in it.

Q Do you have any association with a group known as the Association for Humanistic Psychology?

A Yes. At the present time I am the associate coordinator for the Eastern Region, and prior to that I was the program chairman for the Eastern Region Conference, which was just held in Atlantic City.

Q I hand you this Exhibit BB. Is that the program for the conference you just described?

A Yes.

Q Approximately how many attended that program?

A Approximately 1700 paid registrants.

Q How many dues-paying members are there in the Association of Humanistic Psychology?

A On a national level there are five thousand some odd, and on the Eastern Regional level 2,300, or something of that sort.

Q The catalog that has been marked BB, that has

reference to Arica and calisthenics in it, does it not?

A Yes. One of the workships was precisely Psychocalisthenics, E-25.

Q Has Arica participated in AHP conventions in recent years?

A Yes, a number of them.

THE COURT: That is the one that talks about Miss Johnston?

THE WITNESS: Yes, it is her program. She was the leader.

Q What volume of mailings does AHP make on its pieces such as this catalog?

A This particular one was probably sent out to some ten or twelve thousand. The national ones probably go out to twenty, thirty thousand. The previous Eastern Region which was also in Atlantic City probably had another then, fifteen thousand. So all in all it must have been close to fifty, sixty thousand.

Q Are you familiar with an AHP meeting that took place in New Orleans in 1974?

A Yes.

Q Do you know what month that was?

A August, last week in August.

THE COURT: Excuse me one minute.

(Pause.)

MR. KANE: Let me mark this document entitled "Program Proposal" as Defendant's Exhibit II.

xx (Defendant's Exhibit II was marked for identification.)

Q Can you identify this document which we have marked Defendant's Exhibit II?

A Yes. This is a program proposal that was submitted for a proposal for inclusion at the New Orleans national AHP convention.

Q This is the type of form that is required by AHP from parties who wish to put on a presentation at their national meeting?

A Precisely.

Q And does this -- who submitted this program proposal?

A This was submitted by Arica.

Q And did it include a proposal to do Psychocalisthenics exercises?

A Yes, exercise number four. It specifically indicates Psychocalisthenics.

Q What sheet is that of this exhibit?

A Next to the last page. They are not numbered.

Q Do you know if this proposal was accepted by AHP?

A I think it was, yes.

MR. KANE: I would like to offer this exhibit at this time.

MR. DUBAN: I have no objection.

THE WITNESS: It says it was offered on Tuesday, August 27th from 9:00 to 10:30 in the morning.

xxx (Defendant's Exhibit II was received in evidence.)

Q Are you familiar with the term Psychocalisthenics?

A I have heard of it.

Q Does it have meaning for you?

A I have heard of it in relation to the program that Arica puts on. I have never attended it and I have never attended any of the Arica workshops either. But in my reading and my discussions and in my research, Arica is a very significant factor in the humanistic psychologies and Psychocalisthenics is one of their main systems.

Q In your work running NYU programs and in your other work over the years, have you ever heard of anyone but Arica using the name Psychocalisthenics?

A No, not to my knowledge at all.

Q Are you familiar with the book Psycho-Calisthenics which has been marked Plaintiff's Exhibit 3?

A I am not familiar with it, but I saw it by sheer

chance.

Q When did you see it by sheer chance?

A One of my habits is roaming through book stores, and about three or four months ago I was browsing around in the Doubleday Book Store on Fifth Avenue and 52nd or 53rd and saw a stack of them, and I just glanced through it and was bemused to see the term Psychocalisthenics, which I had always assumed to be associated with Arica.

So I looked through it and I didn't see Arica mentioned very much. So I was intrigued.

Q When you first saw it, did you have a reaction as to whether it was or was not associated with Arica?

A My first assumption was that it should be involved with Arica and that somehow or other someone else opted for the use of the term.

Q Why would you feel it should be associated with Arica?

A Because all of my associations with the term Psychocalisthenics was with the Arica program. In other words, the only way that I know of it is in relation to the Arica systems.

MR. KANE: No further questions.

CROSS EXAMINATION

BY MR. DUBAN:

Q First of all, did you buy the book?

A No.

Q Why not?

A For a number of reasons. One is that I simply cannot buy all the books that seem intriguing. That is number one. The thing that intrigued me mostly was the record inside. But there are so many books that come out in the broad field of humanistic psychology that it wasn't that intriguing to buy it.

Q After examining it, did you feel that there was any association between this book and Arica?

A No.

MR. DUBAN: Thank you.

MR. KANE: No further examination, your Honor.

THE COURT: Thank you, Mr. Davidowitz.

(Witness excused.)

- - -

MR. KANE: Your Honor, we have no further witnesses today. I would like to examine the exhibits and my notes with the reporter to make sure we have them all in evidence.

THE COURT: Do you want to do that now?

MR. KANE: Yes.

THE COURT: I take it after we are clear on the exhibits we adjourn until Monday morning at 10:00 o'clock, is that correct?

MR.KANE: That is my understanding.

MR.DUBAN: May we know who the witness is going to be Monday morning?

MR. KANE: Michael Korda, who was on the list of witnesses we gave to Mr. Duban yesterday.

THE COURT: I would like to suggest -- this is off the record.

(Discussion off the record.)

(Adjournment to 10:15 A.M., June 14, 1976.

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GW1

WEST & CO., INC.,

Plaintiff,

-against- 75 Civ. 5771

ARICA INSTITUTE, INC.,

Defendant.

New York, New York
June 14, 1976
10:15 A.M.

B e f o r e:

HON. CHARLES E. STEWART, JR.,

District Judge.

- - -

THE COURT: Good morning.

MR. KANE: May I proceed, your Honor?

THE COURT: Yes, please.

MR. KANE: Your Honor, I would like to call a witness who is here under trial subpoena and did not appear on our witness list, and it is for the purpose of rebuttal or impeachment. She is a brief witness. I would like to put her on first.

THE COURT: Yes.

GW2

L E O N A W A L D, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KANE:

Q Miss Wald, would you give your name and present occupation?

A My first name is Leona, L-e-o-n-a. My last name is Wald, W-a-l-d. I am the director of Stein Senior Center.

Q Is this a center for senior citizens?

A That's correct.

Q I hand you an exhibit marked Defendant's Exhibit FF and call your attention to the picture of an individual identified as Steven West therein.

Would you read that caption out loud?

A "Psychology talk. Steven West, president of the American Association of Applied Psychology, will present a lecture-demonstration at 1:00 P.M., Wednesday, at Stein Senior Center, 301 East 29th Street. The lecture is free. West is the author of a book entitled Psycho-Calisthenics."

Q I call your attention to the date of this newspaper, which is April 1, 1976.

GW3 Wald-direct

Do you recall that Mr. West did in fact give a lecture at the Stein Senior Center this spring?

A That is correct.

Q Did he give just one?

A That's correct.

THE COURT: This is in evidence?

MR. KANE: Yes, your Honor.

Q Were any of his books available at the Stein Senior Center?

A He did have one of his books, yes.

Q Just one?

A There was only one title.

Q And was there just one copy of the book or did he bring more?

A I am really not aware of that. I didn't arrange for the lecture and I was not aware of the number of books.

Q Did you attend the lecture?

A I was there for the beginning. I introduced him.

Q Did the lecture come right after lunch?

A He came at lunch time. He had lunch with us.

Q Is lunch served at the Stein Senior Center?

A That's correct.

Q Is it free of charge?

A Yes, for senior citizens.

Q Approximately how many people were in attendance at the beginning of the lecture?

A I would estimate about 50 people.

Q Was Pearl Newberger, as far as you know, present throughout the luncheon, the lecture?

A I recall that she was.

MR. KANE: That is all the questions I have for this witness.

MR. DUBAN: I have no cross examination, your Honor.

(Witness excused.)

- - -

P E A R L N E W B E R G E R, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KANE:

Q Miss Newberger, are you a member of the Stein Senior Center?

A Yes, I am.

Q Did you attend a lecture there by Steven West this spring?

A Yes, I did.

Q Did Mr. West contact you about coming to be a witness at this trial?

A No, I haven't heard from him.

Q Did you know that you were listed as a witness for Mr. West at this trial?

A No, not until a young lady came to the center and spoke to me.

Q When was that?

A Friday.

Q About the lecture that Mr. West gave, did he bring any of his books with him?

A Only one to show what it looked like. He didn't even have a jacket on it. He had no other literature with him.

Q Did he donate any of his books to the Stein Senior Center?

A I went to get them. One for the library and one for a raffle. We were running off a raffle. He contributed that so he could make some money.

Q So how many books in total did he contribute to the Stein Senior Center?

A Two.

MR. KANE: No further questions.

You may be cross examined by Mr. West's attorney.

MR. DUBAN: I haven't any questions.

THE COURT: Thank you, Miss Newberger.

(Witness excused.)

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MR. KANE: With the Court's permission, Mrs. Siegrun Kane will call the next witness.

MRS. S. SIEGRUN: Michael Korda.

M I C H A E L K O R D A, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MRS. S. KANE:

Q What is your residence address, Mr. Korda?

A 440 East 56th Street, New York, New York 10022.

Q What is your current occupation?

A I am editor-in-chief of Simon & Schuster and a corporate officer and member of the board of directors of Simon & Schuster.

Q How long have you been with Simon & Schuster?

A Eighteen years.

Q And generally in what capacities?

A Almost every editorial capacity beginning

GW7 Korda-direct

with assistant editor and going to managing editor, executive editor, now editor-in-chief and vice president.

Q Have you written any books?

A I have written two books, yes.

Q What are their titles?

A The first was called Male Chauvinism and was a study of working practices in industry and business for women published by Random House I think three years ago; and the second was called Power, which was published by Random House last year and was a number one best seller.

Q When did you first hear the term Psychocalisthenics?

A To the best of my memory, it was brought to my attention by some of the younger members of the Simon & Schuster staff. I would have guessed late in '73 when they were first noticing the Psychocalisthenics course and some of them were actually attracted to taking it.

THE COURT: You say 1963?

THE WITNESS: 1973.

A It came to my attention largely because whenever it was mentioned anywhere some of the staff would send me little clippings saying, "Would this make a good idea for a book?" and life being what it is, I didn't do anything about it at the time but I remember it

being brought to my attention then.

Q Were you familiar with an organization known as Arica before you first heard the term Psychocalisthenics?

A No, I was not.

Q Did you become familiar with an organization known as Arica?

A I did, yes.

Q And how did that occur?

A I had submitted to me by a literary agent a proposal for a number of books that were to be done by the Arica Institute, among which was the book on Psycho-calisthenics.

Q Are you publishing an Arica book now?

A We are in the process of preparing an Arica book for publication, yes.

Q And what is the title of this book?

A Psychocalisthenics.

Q Have you had any difficulties in connection with the marketing -- strike that. I will ask another question first.

Have you heard the term Psychocalisthenics used by Steven West?

A Well, I am familiar with a competing book called Psycho-calisthenics, yes. I haven't actually heard

that word from Steven West, but yes.

Q Have difficulties been encountered in marketing the Psychocalisthenics book by Arica because of the presence of the West book entitled Psycho-Calisthenics?

A I am certainly given to understand by our salesmen that they run into a fair amount of resistance, even a large amount of resistance, in the stores when they go in to sell our book.

At the American Booksellers convention in Chicago last week, almost everyone who came to our stand noticed we had a poster for Psychocalisthenics and said, "There is already a book out named Psycho-Calisthenics." Yes, there has been a certain amount of difficulty.

Q Is word-of-mouth an important method of disseminating information to book purchasers, potential purchasers in the book trade?

A Yes.

Q In your opinion, will the use of the name Arica as part of the title of a book on Psychocalisthenics so that it would be entitled Arica Psychocalisthenics eliminate confusion with the West book entitled Psycho-Calisthenics?

A No, I don't think it will eliminate confusion. I think there is even a certain danger that it will add to

the confusion. I wonder if I could explain why that is.

Q Please.

A We have changed the title of our book by adding the name Arica before the word Psychocalisthenics not because we think it will eliminate confusion but because we don't know what else to do.

We bought a product basically called Psychocalisthenics, which is an exercise program and so forth. One of the strengths of that in merchandising terms happens to be the name. Psychocalisthenics is one of the catchy, memorable names that sounds as if it means something. Perhaps it does.

Now, our product, the product we have bought and the product we intend to merchandise, is Psychocalisthenics. We can add the name Arica before it simply as a matter of convenience because otherwise our own salesmen in the book stores will go crazy trying to decide which book is involved; but it doesn't really change the fact there are two books called Psychocalisthenics competing against each other.

Now, this is bound to create confusion. The word Arica is really like the author of the book, in other words, I can think of an example in which authors have come up with similar titles, and I should say that

in our business we take a very simple view of the matter, which is that if you discover that you are using the same title as another publisher, the two of you get together and the person who has the earlier contract is generally deemed to be the person who gets the right to use the title.

There are exceptions to this. For example, if the other author is particularly eminent or particularly famous or particularly old, you might feel honor-bound to give way on the grounds that though you may have the right to use a title like the Honorable Consul, if the other publisher has a book by Graham Greene called the Honorable Consul, Graham Greene is so distinguished you can't take the title away from him.

I would say in general when you run into these problems in publishing, the person who has the contract with the earlier date gets to keep the title because everybody recognizes that we all work in isolated boxes and that people can quite honestly come up with the same title for a competing book without knowing that you have it.

I can think of an example several years ago when Joe Heller's Catch 22 was delivered to us. After it went on to become a very famous novel. It was then called

Catch 18 and Doubleday phones us up in horror because they were coming out in the same month with a novel by Leon Uris called Mila 18 and they quite rightly felt if the book stores were inundated with a book called Mila 18 and a novel called Catch 18 at the same time there would be enormous confusion, we would get the books mixed up and so would book stores and book clerks.

We got together with Doubleday and more or less flipped a coin and Simon & Schuster lost and we agreed to change our book to Catch 22,under which title it later became famous.

But ordinarily speaking, in publishing we would go to extraordinary lengths never to have the same title on a book because it is simply confusing and destructive to the market. It confused the reader, it confuses the book store buyer, it confused the book store clerk.

THE COURT: There is already a book on the market with that title.

THE WITNESS: I am aware of that, your Honor. The problem is that the product we have purchased is Psychocalisthenics. If we could change the name of our book to 58 Exercises For Mind And Body Health, that would be one thing, but Psychocalisthenics is, in our opinion, the product Arica has to sell and sold to us. So we can't

easily change. It's as if -- I am trying to think of an example. It's as if you had Nabisco Cheese Whiz Crackers. The name of the cracker is Cheese Whiz. If somebody came up with a cracker called Cheese Whiz and called it United Brands Cheese Whiz, you would still have two different crackers with the same name in the supermarket and you wouldn't know which one you were buying.

In other words, it is an extremely complicated process to change that name. If we could come up with a better name than Psychocalisthenics for what Arica's program is we would, except that is the name of what they do.

I am sorry, I haven't expressed that terribly clearly.

Q You indicated earlier that you had been getting clippings from your staff referring to the Pshcho-calisthenics program. Were these programs referring to the Psychocalisthenics courses that were given by Arica?

A I believe so, yes.

Q So before you even contracted to publish the Arica book under the name Psychocalisthenics you had heard of the Psychocalisthenics exercise courses that were being given by Arica?

A Yes, I had. It struck me at the time as one

of the very good names. Psychocalisthenics sounded to me like a salable merchandising product.

Q Have you ever heard anyone outside of Arica or West use the name Psychocalisthenics?

A No.

Q In your opinion, would the presence of a disclaimer on either the Arica literature or on the West literature prevent confusion?

By "disclaimer" I mean some words to the effect one party is not associated with the other.

A I would think not. In the book industry we have never, to my knowledge, run disclaimers. One of the reasons is that buying a book is really, for the most part, an impulse point-of-sale decision. You go in and you buy it. The amount of time that is available to people in deciding to buy a book is really very small, and I doubt whether anybody would read a disclaimer if he wanted a book.

Again, that is another confusion. If there are two books with Psychocalisthenics and one says it isn't a book on Psychocalisthenics, my own feeling is if you are in that kind of situation what happens is the purchaser doesn't buy either of the books, because faced with that kind of confusion,you go in and ask for a book

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called Psychocalisthenics and the book store owner says, "There are two books, the Arica book and the West Book. Is it the one by Doubleday or Simon & Schuster? Which one do you want?", the thing is they would say, "I don't want either."

THE COURT: You talked about impulse buying, Mr. Korda. I am told that in supermarkets a product which is the subject of impulse buying is ice cream. So you find near the checkout counters the ice cream freezers because people normally don't put down, when they are listing lettuce and Corn Flakes, ice cream. They just see it on their way out and pick it up and buy it.

But they are likely, at least I think it is possible that they are likely, to look and see Sealtest or Howard Johnson or some name that they recognize and they pick up that brand of strawberry ice cream rather than a brand that doesn't mean anything to them.

Why don't we have the same situation here? Psychocalisthenics is beginning to get not quite like ice cream but it's a name which is catchy and so is ice cream. Some people like to buy Breyer's Ice Cream or Borden's Ice Cream or Schrafft's Ice Cream or goodness knows what, and they will look for the brand name. They know they want ice cream but they prefer a certain brand.

Why don't we have something like that here? Psychocalisthenics, there are two people that are offering a program, and you say the name is catchy but I don't suppose the name is going to sell anything unless there is something below the name to support it, unless there is something that means something to the people that are interested.

I am suggesting that people don't buy the book Psychocalisthenics, at least they don't buy it very often, just because they think it's a curious name and they would like to find out what it is all about. They have heard about the program and they follow through on the program or they consider it and decide not to, but they talk about it and pretty soon there is a program that we are concerned about just like a product ice cream.

Why not Arica Psychocalisthenics, West Psycho-Calisthenics? Maybe one is better than the other.

I am not sure my analogy is any good at all, but if you get anything out of what I just said I would like your comment on it.

THE WITNESS: Your Honor, it raises a lot of somewhat abstract questions about how we sell books, which is, of course, something like black magic because we don't really know why books sell.

THE COURT: I don't think people who make ice cream know why ice cream sells either. They do the best they can.

THE WITNESS: I think more people want ice cream than my books.

My view of a program by Psychocalisthenics is this: in fact, there are certain books that do sell on the phrase alone, that is to say -- and I can think of examples. They may not be perfect ones. We published a book called Total Fitness. Total Fitness is an exercise program. It has two authors. The actual contents of that book and the authors of that book seem to me irrelevant to its success. The phrase Total Fitness, You Can Be As Fit As You Ever Have Been In Your Life In Just 30 Minutes A Week, is a product and a package in itself and it is an impulse purchase. You go into a book store and you see Total Fitness, You Can Be As Fit, and you buy it or don't buy it. But the content of the book, whether it is good or bad, and the authors of the book are not particularly significant, nor are you in any way prepared to make that purchase. You walk past Total Fitness and that phrase is so catchy that if you are worried about your health, you can't help yourself from picking up the book and looking at it, at least in our view.

A similar situation would be Norman Vincent Peal's book The Power of Positive Thinking. It was famous long before Normal Vincent Peal was famous. It was The Power of Positive Thinking that made Norman Vincent Peal famous because it is a good idea, a good title. People went into the book stores and bought the book in large numbers.

I am not suggesting Psychocalisthenics is necessarily -- I wish it were -- as catchy as The Power of Positive Thinking.

THE COURT: It may be.

THE WITNESS: It is one of the things that seems a natural word in the book store. I bought the book from Arica for Simon & Schuster not because of Arica but generally because Psychocalisthenics seemed to be a terrific word. It's the word that is significant to us.

I am not saying we don't want that backed up by a set of exercises that works. We don't want to sell something that is fraudulent or garbage but the word itself is what made us in effect negotiate this contract.

THE COURT: Suppose the title were Double X Fragilistics. Would that appeal to you?

THE WITNESS: Not specifically. If you mean would another word that was just as good do instead

of Calisthenics --

THE COURT: I am talking about Double X Fragilistics.

THE WITNESS: No.

THE COURT: It doesn't mean anything to you?

THE WITNESS: It doesn't mean anything to me.

THE COURT: The examples you gave were Power of Positive Thinking and Total Fitness. They suggest something, the names. They suggest quite a lot. I am wondering if Psychocalisthenics isn't interesting to you as the title of a book because it suggests something because of the combination of the use of the phrase, the word, the prefix "psycho", which most people know about or most people who buy books know about, that it relates somehow to the mind or your mental capacity or your mental processes; "calisthenics" is something everybody took in grammar school. So the name itself has meaning, whereas Double X Fragilistics -- what's that famous phrase or song?

MRS. S. KANE: Supercalafragilistic-expialidocious.

THE COURT: I am suggesting that the name "calisthenics" seems to you to be a good name because it immediately hits the person who is interested in buying books, it suggests something to him.

THE WITNESS: Yes, that would be true.

THE COURT: Like Total Fitness.

THE WITNESS: Yes, I think it appeals to a different market. One of the reasons Psychocalisthenics struck me as a terrific name is that it seems to me to work very well for young people, for people who are interested in spiritual exercises as well as body exercises, but also it cuts across a broader range than just a youth market.

THE COURT: Total fitness, young people assume they are totally fit, they aren't quite so interested.

THE WITNESS: That would be quite true, as a matter of fact. Total Fitness I would imagine sells to people over the age of 30, probably over 40. I would imagine Psychocalisthenics sells to people over a broader spectrum but weighted toward the younger audience.

Q Mr. Korda, is the reputation of the Psychocalisthenics courses as sponsored by Arica one of the reasons that your company determined to go ahead and publish a book under the name Psychocalisthenics?

A Yes, I would say so. Before we actually contracted for the book, I went and visited the Arica headquarters in New York and was extremely impressed both by the plan and the exercises that were taking place there

and by what everybody up there showed me in the way of instruction and exercise and their plans and their programs and their intentions for expanding the centers all over the United States.

Certainly the existence of Arica as a functioning body was something that I wanted to check out with my own eyes before taking on the book, yes.

MRS. S. KANE: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. DUBAN:

Q Mr. Korda, you testified before this Court previously in this matter, I believe. I believe it was last December.

A I think so, yes.

Q Now, at that time when you were asked the question: "Did you make a name search to see whether anyone else had used that name before contracting with Arica?", what was your response at that time?

A "No."

Q And you said it was not your practice to see whether anyone else had used names?

A That is quite true.

Q So then, at the time you contracted with

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Arica you really had no idea whether any other organization, group or groups were using the same name, Psychocalisthenics?

A Quite true.

Q You just took the chance that yours was the most popular?

A I would disagree with that interpretation of it. It is not that we take a chance. It is when we buy a book it is up to the author to insure that his title is the correct one.

In most cases it doesn't -- I don't mean to expand on that, but in most cases it is a very difficult problem. As I have explained, when it is between two publishers we nearly always work the matter out between us so that it isn't that we just take a chance as casually as that.

We have no way of knowing what other publishers may be calling their books, but if we reach a point in time when there seems to be a collision between us, we assume, being trade publishers, we will work this out and it is the author's responsibility to come up with a working title.

Q But you certainly would have no idea especially since you don't even make a search?

A Quite.

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Q Correct?

A Yes.

Q Mr. Korda, I show you this, which is Plaintiff's Exhibit 4, and ask you if you are familiar with it?

A Yes, I am familiar with this. This is the Simon & Schuster catalog for - I am afraid I can't remember myself when it is for -- the fall of '76.

Q And it is your current catalog, is it not?

A It is the catalog for the coming season, which runs from July to January.

Q Right. Now, on page 39 is the picture on the bottom half of the page which is depicted here representative of the book jacket or the ads that are to be placed for Arica's Psychocalisthenics?

A It is the book jacket we have planned at this moment. We have been through several different book jackets without pinning down the final one. At the moment it is the book jacket that we hope to use if Arica agrees to it. I can't promise that it will be the basis for ads because they might differ, but they will probably show that book jacket in some way, yes.

Q In looking at it again, would you say that the type face for the word Arica is larger than the type face for the word Psychocalisthenics?

MRS. S. KANE: Objection, your Honor. It speaks for itself.

THE COURT: Overruled.

Q You may answer.

A Yes, it is larger.

Q You testified earlier that the name Psychocalisthenics was catchy and that's what drew you toward being interested in publishing the book.

Are you always necessarily motivated by a catchy name or are you interested in the subject matter?

A Obviously that depends on the kind of book, but there is a kind of book that really hangs on a catchy name, yes. That does not apply to every book, and I would not claim that. But certain products sell on their names, and it has always been my contention that Psychocalisthenics is one of those products.

Q Mr. Korda, I show you the same document and call your attention to page 43, the bottom of the page, and ask you to read the title of the book for the Court.

A The Human Process For Enlightenment And Freedom.

Q Would you say that is a catchy name?

A Absolutely not.

Q Who is the author of that book?

A Oscar Ichazo.

Q Is that the same Oscar Ichazo who is the founder of Arica?

A This is the same Oscar Ichazo.

Q So you are going to publish two books that are identified with Arica?

A It is not absolutely sure that we will manage to bring this book out as in the catalog in this season, and it is not absolutely sure we will in fact publish it because we may merely distribute it.

Q That book by Oscar Ichazo, you said before that it is not a catchy title, correct?

A Yes.

Q Therefore, would it be correct to assume that you are counting on people to either know the author or to go through the book before they decide whether they would like to buy it or not?

MRS. S. KANE: I am sorry, I didn't hear the beginning of that question.

(Question read.)

A I think the fairest explanation I can give of that is that we are publishing Oscar Ichazo's lectures because the institute would like to have them published and made available to the public.

Speaking frankly, I have limited hopes of selling that book at all, but I can see why for their own reasons they would like to have it in book stores. The book is already being distributed in Arica centers. I believe not for sale but they give it away to students. They would like to have it in the book stores for whatever reasons of their own.

I do not regard this as a commercial venture. I regard this, perfectly frankly, as a favor we are doing Oscar Ichazo and Arica Institute.

Q It is an accommodation to them?

A "Accommodation" is a better word. We may pick up something like twenty cents a book of profit spread across three or four thousand books, but that is not really the reason for doing it.

Q Certainly in your expert opinion the sales of this book would be predicated upon people who are familiar with the author and the content of the work rather than just a catchy title?

A I think it unlikely that the sales will be at all significant except possibly to libraries unless in some way Arica becomes a household word between now and the time it's published.

But yes, the title is not one that would

instantly catch your attention or your eye.

Q Were you present in this courtroom when Gerald Goodman testified?

A I don't believe he testified in person. I remember that I was present when something was read out from him.

THE COURT: This is Thursday.

THE WITNESS: No, I am sorry.

Q But you are familiar with him?

A Yes, I am.

Q And you are familiar with the book Powers of the Mind?

A I have read it, yes.

Q Would you be surprised if he testified to the fact that he sold, exclusive of Book-Of-The-Month Club, 65,000 copies of his book?

A No.

Q That would be a pretty wide distribution?

A Not particularly, no.

Q Not particularly. But it's --

A It's not bad but it is not up to his par.

THE COURT: How many of the Money Game were sold?

THE WITNESS: I didn't publish it, but it

would have to run into six figures.

Q If you were told that West's Psycho-Calisthenics has sold 50,000 copies to date, subject to returns, naturally, would you say that is a pretty good distribution for a book of that kind?

THE COURT: I didn't think the testimony was that 60,000 had been sold.

MR. DUBAN: 50,000.

THE COURT: 50,000 had been sold?

MR. DUBAN: Yes, sir, sold subject to the right of return.

THE COURT: Distributed?

MR. DUBAN: Yes.

THE COURT: Maybe I have got my figures wrong, but I thought something like 20,000 were sold and 30,000 were given away.

MR. DUBAN: No, sir. We can check that, sir.

THE COURT: All right.

A Are you asking do I think that 50,000 copies gross, as opposed to net, would be a good sale for a book of this kind in hard cover?

Q Yes.

A Not bad.

Q You testified earlier today that you can't

always publish a book that has a unique title and many times there are similarities between book titles?

A That is true.

Q Does that also ring true for books that have been published in the past as contrasted with books you are contemplating bringing out now?

A Generally speaking, in book publishing it is considered all right to use a title that has been used in the past provided that the previous book is pretty much dead, in other words, once it's out of the way and forgotten, then you can usually use the title all over again and nobody will mind.

It is considered somewhat unfair to do it so that you tread on the other publisher's feet.

Q Are you familiar with a literary work which was called The Story of O?

A Yes.

Q Was that quite popular a few years ago?

A Enormously.

Q Enormously popular. Are you currently contemplating publishing a book with a similar name that appears in this fall edition of your catalog, The World of O?

A You know the catalog better than I do.

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THE COURT: I see in here something called The Wonderful O.

MR. DUBAN: The Wonderful O.

THE WITNESS: The Wonderful O is a James Thurber children's book that was published years and years before The Story of O. Years and years.

Q You did testify that The Story of O was very popular?

A Certainly.

Q And most recently certainly more popular than The Wonderful O was?

A I would be inclined to dispute that.

Q Certainly it was at least as popular?

A In its day, The Wonderful O probably sold more copies in hard cover than The Story of O ever did.

Q Do you think or, rather, did you contemplate the fact that there may be some confusion now with your publication of The Wonderful O?

A No, because here you have a completely different -- to my mind, a completely different situation. Nobody in their right mind in a book store will confuse a notorious French work of pornography with a classic children's story by James Thurber.

Q So what you are saying is that as soon as

a member of the buying public sees the author is James Thurber there can be no confusion?

A No, I am not saying that. I am saying that the product itself is totally different. One is a children's book and will appear in the children's book shelves, one is a work of pornography which in some stores will be exposed on the pornographic shelves and in other stores will be sold under the table.

Q But certainly a person picking up both books would be able to distinguish one from the other?

A There would be, to my mind, no circumstances realistically in which a person who is trying to buy a children's book would end up buying a book on pornography.

Q You are assuming someone is going to buy a children's book. I am saying if a person seeing a book on a book shelf and it is not labled children's book or pornography, or whatever, but that he will be able to identify which book is which.

A I think the answer to that would be yes, and I am not sure that our edition of The Story of O isn't labeled. I can't promise you that it is.

Q The Story of O?

A I am sorry. The Wonderful O.

Well, the Wonderful O doesn't show it. I

have to tell you, I can't prove it to you, that when this jacket is finished, because it is a qualify paperback, it is the custom on quality paperbacks to indicate categories on the paperback. It will say on the top and on the back in fairly large letters "Juvenile," or "Children's Book," as the case may be. So in fact it will be labeled as a juvenile.

Q You also testified earlier today that the word Psychocalisthenics was suggestive to you, is that correct?

A That is true.

Q What does it suggest to you?

A It suggests to me a course of exercises of the mind and the body.

Q Have you read Mr. West's book, Psycho-Calisthenics?

A I have not, no.

Q Then you don't know how it compares to Arica's Psychocalisthenics, do you?

A I do not, no.

Q Would it come as a surprise to you if members of Arica had testified in this courtroom that Arica's exercises are not meant to stimulate the mind at all but that Mr. West's book is a mental exercise as well?

MRS. S. KANE: Your Honor, I object to that

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question. It is argumentative and Mr. Duban is characterizing the testimony here when this witness wasn't present. It is irrelevant besides.

THE COURT: I think the question is all right, Mrs. Kane. Whether he accurately characterized the testimony is another question. I think we are entitled to get an answer from the witness.

A Could you repeat the question? I am not absolutely sure I have understood it.

Q Would it surprise you if persons from Arica have testified in this courtroom that Arica's Psycho-calisthenics is not a mental exercise?

A I can't say it would surprise me. I would tend to disagree with it.

Q You would tend to disagree with a member of Arica so testifying?

A Yes. I mean that just wouldn't be my opinion of the contents of the book.

Q Would it further surprise you to know that Mr. West's Psycho-Calisthenics is a mental exercise?

A No, that would not surprise me.

Q Would you say that a book dealing with mental exercises rather than a book dealing not with mental exercises would be closer associated by a word Psycho-

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calisthenics?

A You have to repeat that question. That is a puzzler. Could you repeat that one?

MR. DUBAN: Mr. Reporter, could you read that back?

(Question read.)

A I would say, if I understand the question, yes.

MRS. S. KANE: I think that question was complicated with a lot of negatives. I frankly didn't understand it and also I think it is irrelevant.

THE COURT: Do you think you understand the question, Mr. Korda?

THE WITNESS: I think so.

A Am I right in assuming that a book associated with mental exercises would be more easily recognizable as Psychocalisthenics than a book that is not associated with mental exercises?

Q Yes.

A I would say that the answer to that question would be yes, but with the qualification that the contents of the Arica Psychocalisthenics book does include an enormous amount of material on meditation and, therefore, is concerned with mental exercises. I hate to contradict

the Aricans, but it does contain material on what I would regard as mental exercises as an outsider.

Q Is it correct that you have no financial interest in seeing the West Psycho-Calisthenics book sold?

A That is quite true, yes.

Q But your company does have an on-going financial interest in Arica's publications?

A That is true.

MR. DUBAN: Thank you. I have no further questions.

MRS. S. KANE: No further questions, your Honor.

THE COURT: Mr. Korda, thank you very much.

(Witness excused.)

MR. KANE: Your Honor, Arica will present no further witnesses.

MR. DUBAN: We have none, sir.

THE COURT: Gentlemen, we have to fix a time-table for briefs and findings.

(Discussion off the record.)

THE COURT: The only question that remains is whether you gentlemen want to give me brief summations. Since we are going to get briefs and findings, I will leave it up to you. I had thought that perhaps a very

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brief statement, and I am thinking of five or ten minutes, no more, you might want to present to me, but I will leave it up to you entirely.

My deadline for the findings I believe is July 9th.

MR. KANE: On behalf of Arica, I would like to offer closing remarks.

MR. DUBAN: I would also, your Honor.

THE COURT: All right. Do you want to take a couple of minutes to get yourselves organized?

MR. KANE: All right, and to fight about the order. We are having a dispute about who goes first. I think Mr. Duban should go first.

THE COURT: I would think so.

MR. KANE: We will take a few minutes.

(Recess.)

THE COURT: All right, Mr. Duban.

MR. DUBAN: Your Honor, I would like to briefly recap the proceedings that we have seen in the last few days and to touch upon some of the testimony given by witnesses both for the plaintiff and for the defendant Arica.

At the outset of plaintiff's case, the plaintiff attempted to establish the fact that its inception and

first use of the word and mark Psychocalisthenics was in June or July of 1972. To support that case, plaintiff called to the stand certain witnesses who attended meetings in the Windham Hotel in July and August of 1972.

One of the witnesses who appeared for the plaintiff was Janice Henningsen, who was formerly Janice West. Mrs. Henningsen testified to the fact that she had attended the meetings and that she had in fact accompanied her then husband in January of 1973 on a trip to Hong Kong, in which certain notes were transcribed and typed by her, all referring to Psychocalisthenics.

Mrs. Henningsen at the conclusion, when cross examined by Mr. Kane, testified to the fact that she had no continuing relationship with Mr. West nor was she supported by Mr. West.

Another plaintiff's witness is Richard Ossen, who is with Doubleday Advertising, which is a subsidiary of Doubleday Publications. He testified that they are preparing dissemination of advertising and promotional materials for wide circulation for the book West's Psycho-Calisthenics.

Mr. West testified to the fact that he conceived of the name Psycho-Calisthenics as it best applied to the type of work that he was trying to establish and promote.

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Mr. West testified that approximately 50,000 copies of his book are now either distributed or in circulation.

The defendants called a number of witnesses to the stand and introduced into evidence large numbers of documents and other material. However, none of these documents place the conception or first use of the word Psychocalisthenics prior to the date first used by West. As a matter of fact, the origin of the word Psychocalisthenics has not been established by any of defendant's witnesses, including its employee Steve Stroud, who was a vice president.

When asked: "Are you sure that the name was conceived by Oscar Ichazo," he testified to the fact that he couldn't be sure but he first heard it from Oscar Ichazo.

However, Oscar Ichazo was not produced at this trial. The one person who could have shed light as to when he first conceived or used the word was not produced by the defendants although he certainly is under the control of the defendants.

Morris Squire, who was a witness for the defendants, testified that when Psychocalisthenics was originally known as Gym, the important association in a

person's mind was the fact that it was Arica, that it was Arica Gym, and that Arica was the main, dominant identifying source.

Now, William French, who was also called by the defendants, testified that he had no knowledge of the actual coining of the word Psychocalisthenics.

Robert Horn, who was the researcher for Psychocalisthenica and instrumental in Arica receiving a grant from the U. S. Government, also testified to the fact that he could not definitely ascribe the name Psychocalisthenics to having been originated by Oscar Ichazo.

Moshe Davidowitz, another witness for the defendants, also testified that when he saw the book West's Psycho-Calisthenics, he stated that ultimately he did not buy the book and he did not confuse that book with Arica.

Finally, the last witness today, Michael Korda, has testified that there quite often is a similarity of titles, as a matter of fact, there is a similarity today in Simon & Schuster's current fall catalog between the titles of a book that is currently being contemplated for publication and a very established book.

Mr. Korda also testified that they are publishing

as an accommodation to Arica and to Oscar Ichazo another written by Oscar Ichazo whose name is not a catchy name. However, as a favor or an accommodation to Arica and Mr. Ichazo they are going to publish it.

Interestingly enough, Mr. Korda testified that in the confusion of The Wonderful O with the book The Story of O that anyone wishing to know if either book was associated with the other would clearly be able to understand the nature of the book by simply looking at the jacket because he said there would be some identification on the jacket telling the reader what type of book it is, and it is plaintiff's closing argument that an attempt can be made to clearly identify and distinguish West's Psycho-Calisthenics from Arica's Psychocalisthenics, and that there will be no confusion in the mind of the public. West's book can be modified, his jacket cover can be modified to clearly distinguish it from Arica's.

Thank you.

MR. KANE: Your Honor, a word about the first two witnesses for Arica this morning, the ladies from Stein Senior Center.

The record will show when Mr. West was in that chair last Wednesday he testified about the meeting at Stein Center. He said that hundreds of people were in

attendance, and he referred to donations of his book in the sense that great quantities of books had been given as part of his philanthropic activities. He even listed Pearl Newberger as one of his witnesses. She was the lady who came in this morning.

The fact is it wasn't hundreds, it was fifty or less people who come there for lunch who were all of a sudden presented with Mr. West as part of their dessert. He was there, certainly, but the impression sought to be given to this Court of a great philanthropist is an exaggeration, to say the least.

We think it significant because we think that West's story from beginning to end has been one of exaggeration, from the papers submitted at the preliminary injunction, where he said he heard of Arica as Psychocalisthenics in early '74, from his position here at trial when he concedes to a spring, 1975, date and said the earlier papers were typos, from his position before the New York State trademark authorities and the Patent Office trademark authorities as to when he first used this name.

Mr. West testified himself that he reviewed the facts with his counsel, reviewed these alleged 1972 uses, and apparently a judgment was made to claim October, 1974.

This is a judgment I can understand. Certainly

the Arica tale is similar. Before our first courses, before our first news letter in June of '73, yes, there were in-house mentions of Psychocalisthenics, but an in-house mention, an informal report is not the formation of a trademark right. What is essential to trademark rights is public use.

For a while here in Mr. Duban's summary I thought I was in a patent case: date of conceptio.. date of conception, no one can tell me when it was conceived. That is the question in a patent case, date of conception, diligent work to reduction to practice. That is not trademark. Totally different. It is a different statute, a different body of law.

Trademark rights are acquired through use. Boilerplate statement. What is use? The cases are very clear. This is the point we stressed in our pretrial briefling, the question of priority. We tried to bring in the cases that show that it is not a mental use, a thinking of the name in your own head or even a casual conversation. It has to be a holding out to the world on a continuous basis that this name now identifies your goods or your services.

The principal cases in there are the Rolley decision out in the far west which turned up first in

West's brief at the preliminary injunction, and really, as the case develops, has a lot of pertinence to this case and we intend to talk about it a good deal in our final briefing.

It involves a person in Mr. West's position who keeps going back to an earlier date as he finds out his adversary was a little earlier than he thought. But the court there, as the Fifth Circuit did in the recent Blue Bell decision, said that you can't just do something casually and then later say, "This is my trademark use." It has to be a thoughtful act, it has to be a public act, it has to be a continuous act.

None of these elements is present in West's activities until we get all the way up to October of 1975, October of last year. He testified himself that his publication date of this book was in October.

Your Honor, as we look through the record, witnesses' testimony, documentary exhibits, for activities, public, notorious activities before October, 1975, we don't see it for West. He himself has testified that there was no public printed mention of the name Psychocalisthenics in '73 or '74. The first public printed mention of Psychocalisthenics was in connection with the release of this book in October, 1975.

On the contrary, Arica's record, and it's before the Court, shows from that first news letter in June of '73 a consistent presentation of programs identified as Psychocalisthenics from June, 1973, right up until the present.

As I say, our briefs before trial stressed the issue of priority. It is apparent that our briefs after trial must turn to a different issue, that is, what is a trademark.

I have always found it hard to deal with that question in this suit, and I suppose I underplayed it in my preliminary injunction argument. I know that in reviewing my notes from that day I had it down as my first subject, do we have a trademark here, and I referred to the fact that I was in court representing a defendant who had been sued for trademark infringement.

My adversary claimed the trademark. I called the Court's attention to my adversary's book, Psycho-Calisthenics with "r" in a circle on it, to this advertising campaign he is mounting this summer that claims Psycho-calisthenics as a trademark, a trademark, a trademark.

I thought the issue was over, and I turned to the rest of the case. Two weeks later down came the decision. We had no trademark here, and I knew you can't

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say that was a bad decision because that preliminary injunction record was so light and at that time, of course, the two parties had their co-pending applications in the Patent Office. We were both trying to register in there and nobody had any success.

Of course, since then things have changed. We have built a record first of exclusive use of this term outside of the adversary's use. It is not in a dictionery, it is not in the treatises.

We have had Mr. West's lawyer, sometimes his businessman friend, who writes advertising copy for him and permits his name to be used in Mr. West's advertising literature, but that man, Mr. Finnell, came here and testified on the first day of trial as to the search he conducted in his apartment for any literature with the name Psychocalisthenics. He said he had quite a collection of literature. When this suit was brought he took that collection apart, as I understand he would, to find another use of Psychocalisthenics, and he came up empty-handed but for the spring, 1973, catalog for Esalen which, as our witnesses told you, have authorized Arica training. Nothing else; nothing else.

On the issue of the existence of a trademark here, I think the strongest -- well, I won't say the

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but it is a heavy point, and that is the Patent Office action.

In our briefs I will be citing to your Honor Second Circuit decisions in cases involving the name Contact for an adhesive paper that adheres and Trim for a cuticle trimmer. I can't remember which one is which. One was Second Circuit. But in one of them the two parties both sought to apply the name at the same time -- applied to register the name at the same time. The Patent Office cited them against one another, and the Patent Office had also said they were descriptive.

At the end of the Patent Office prosecution the plaintiff ended up with the Patent Office approval of his name, and I know that in both cases, the Contact case and the Trim case, the court put significant weight on the Patent Office finding that the name was not merely descriptive and hence was entitled to registration.

Another Second Circuit authority already in our brief is the Feathercomb case. Feathercomb was a name that was applied to a comb that was placed in your hair to hold it in place. The other side used the name Featherlight on a hair roller that you use when you are setting your hair.

It, too, has similarities to our case but

GW47

not too great. The similarity is that the defendant, the Featherlight fellow, alternated between claiming it was descriptive and a trademark. In the end the court said it is descriptive, Featherlight is descriptive, and held because Featherlight is a phrase that turns up in your conversation: the article was featherlight, light as a feather. When you put that on a hair roller, it can very well seem featherlight, whereas Feathercomb had no direct meaning.

If you thought about it for a while presumably it suggested comb, which is light, but it doesn't say that, and the Second Circuit in the Feathercomb decision not very long ago held Feathercomb to be a good trademark and to be infringed by Featherlight.

The case that I suppose we will brief the most -- these are factually similar cases, but this January, 1976, decision by the Second Circuit in the Abercrombie & Fitch v. Hunting World case deals at length with when does a name become a generic name, when does a name become a trademark and what are the gradations.

It builds a series of four gradations: First you have got a coined trademark; then you have got a merely descriptive term; then you have got -- sorry. I reversed the order. The strongest name is the coined

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name; then comes the suggestive name; then comes the descriptive name; then comes the generic name.

The generic name is unprotectible; a descriptive name can be protected if secondary meaning is shown; a suggestive name is protectible per se, and it is Psychocalisthenic's status as a suggestive name, no worse than that, that is shown by the Patent Office allowance. After all, the very best trademarks are intended to convey to the public something of the quality of goods or services with which they are associated. They can't simply describe it because everybody has to be free to describe it, but if you move away from simple generic designations you are naturally going to have something that is suggestive, no doubt about it.

In the testimony this morning from Mr. Korda I heard the word "suggestive" again and again. It is suggestive, suggestive, suggestive. That is not a sin. That is a strength in the position of Psychocalisthenics.

Turning to relief, both sides are asking for injunctions against the other, although, of course, Mr. West moves on that frequently to allow us to continue to use if we will do the same for him.

We cannot accept a compromise on that basis. To allow West to continue to use Psychocalisthenics means

that there will be no stopping anyone. The West use itself will be totally destructive of Arica's goodwill in the name Psychocalisthenics but it wouldn't end with West. You can't have two people using a name. If Two people use it, that name is generic and everybody can use it.

Est reported in Time Magazine can have their Psychocalisthenics exercises, and the value of the name, the value that has been placed on it by Arica through use over these years, will evaporate. It will no longer distinguish a program offered by Arica.

The use of West's name along with Psycho-Calisthenics as an answer here, let the book be described as West's Psycho-Calisthenics, has been treated regularly in this circuit and regularly dismissed.

A recent authority is the Lacross pen case. There is a famous expensive gold pen called Cross pens, and the infringer came along with a similarly fashioned pen and he called it Lacross pen, but he called it Lacross by Bradley. His trade name was Bradley. The Second Circuit struck it down, as they should. To add Bradley to Lacross doesn't diminish Lacross. Lacross is still there with the full likelihood it is going to be associated in some way with the famous Cross pens.

Turned around the other way, to say that Arica should come out and use its trademark in some fashion that will let the public know that Arica has nothing to do with West, I think is to put the cart before the horse very seriously. It is in substance to deprive Arica of its trademark.

As things should stand under the law and on the fact record here, Arica should be permitted to carry its programs forward using any of its names alone or in combination, selling Arica training, selling Psychocalisthenic exercises to the hospital in Chicago or other interested parties who may have seen it at the Association of Humanist Psychologists' convention, that they should have a right to use each name independently, together or separately. Their right to use the name should not be restricted. Arica should not have to say, in substance, each time they say Psychocalisthenics, "No association with that Mr. West; no association with West."

This is Arica's name and until it has been taken from them the thought of disclaimers or trade name usages has no place in this case. If it is a protectible trademark, it is protectible exclusively.

Many products are in the market in this country carrying two trademarks. I sometimes think that is one of

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the issues that is confusing us here as I try to make an exposition of our position. Sometimes Psychocalisthenics is referred to as Arica's Psychocalisthenics. No doubt about it. But so is the Ford Mustang; so is the Bulova Accutron watch. That doesn't mean someone can come along and make an Accutron watch and say, "No association with Bulova." They don't steal the two trademarks, they can steal one.

General Motors can't bring out a Mustang, the Cheverolet Mustang. They are both trademarks. In order to earn the honor of being known as a trademark, they have to establish their public association with a particular source of manufacture and that Mustang has done independently of whether it is used with Ford or without Ford.

Even on the ice cream analogy that came up at the end today, I think of Sealtest Light and Lively. When I look in my ice cream counter I see Light and Lively. In the corner it says Sealtest. Does that mean non-Sealtest companies, Borden or Schraffts, can come out with a Light and Lively. They say the ice cream is light, it is lively, why not? The answer is no. That name has been through litigation not on the issues presented here but it is a good example of the name, and yet it is associated with another name on the package, Sealtest. It does not

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mean Light and Lively can be taken as long as the thief does not take Sealtest as well. To take either one is a violation of trademark law.

That's all I have, your Honor.

THE COURT: All right, gentlemen, thanks very much. I look forward to receiving your papers.

Mr. Duban, I hope you have a nice trip.

I have some exhibits here. What should I do with them?

MR. KANE: I plan to bring down all my exhibits at the same time I bring down the findings.

THE COURT: What I have is the book Psycho-Calisthenics, and we have somewhere the book Power of the Mind, and I also have the Simon & Schuster catalog.

MR. DUBAN: I will take that.

THE COURT: I have D and B, which are the copies of the file wrappers.

MR. KANE: Those are mine.

THE COURT: If we need any of these in the meantime we can call your offices.

MR. KANE: Exactly.

THE COURT: I also have FF. I take it that you don't need this book or the other one which we have.

MR. KANE: Defendant's Exhibit U is that

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Psychocalisthenics chart from Arica, and I feel that if Mr. West's version of Psychocalisthenics is going to remain here I would like to keep our chart here as well.

- - -

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PLAINTIFF'S EXHIBIT 2 - AD IN WALL STREET JOURNAL 423a

I've combined the Benefits of Meditation, Yoga and Psychology

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SIMPLY STATED WHAT I HAVE DONE IS TO GIVE YOU THE SHORTEST AND MOST EFFECTIVE ROUTE TO TAP THE BENEFITS OF MEDITATION.

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If you have ever found yourself coming out on the short end of the stick, whether in a social situation or a million dollar business transaction, you will quickly understand why the readers of Psycho Calisthenics beget new readers.

As you begin to practice meditation there will be fewer occasions when you find yourself scratching your head and trying to figure out why the situation you thought you had under control ended up falling apart at the seams.

Within this book there lies certain universal truths. Even as a truly successful person, I am sure that there are moments that you do not function with all the coolness, calm, creativity and precision to which you aspire—whether it is a loan that isn't granted, an acquisition that falls through, or a sale that fails to close, or any other type of deal that doesn't work out... the insight, calmness and creativity that meditation can give you will increase your batting average.

If you are expecting an intellectual dissertation, forget it! Psycho Calisthenics was written for real executives who play for real chips in the real world.

If you are in any way involved in the business world, whether as a head of a giant company or as an independent operator, regardless of the level at which you compete, you will always consider this book to be one of your most valuable assets.

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Argentina	*Finland*	*Ireland*	*Netherlands*	*Spain*
Brazil	*France*	*Israel*	*Nigeria*	*Sweden*
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Jack Finnell, Attorney

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Willian Wolfe, President Doubleday Advertising

"Your Psycho Calisthenics Meditation Program has had enormous effect on my ability to relax, control situations and achieve more within a limited time reference".

Sidney Friedman, Vice-President Shearson / Hayden

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"Personal health is a great responsibility. Meditation helps me perform effectively and lovingly".

Dr. A.C.

"Steven West is a young man who will certainly move mountains on this planet. His ideas on Meditation and Psychology will, no doubt, dramatically effect executive and personal performance in the 1970's and 1980's".

Professor E.A., University of Pennsylvania Wharton School

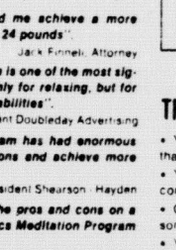
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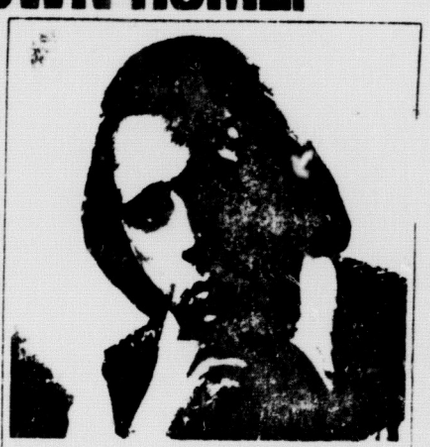
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Steven West, Fellow, American Association for Applied Psychology, is also Chairman of the Board of several multi-national corporations including American Leisure Industries and International Toy Corporation. In it, Steven West will teach you how to [illegible] at home with his new, easy, simple techniques [illegible]

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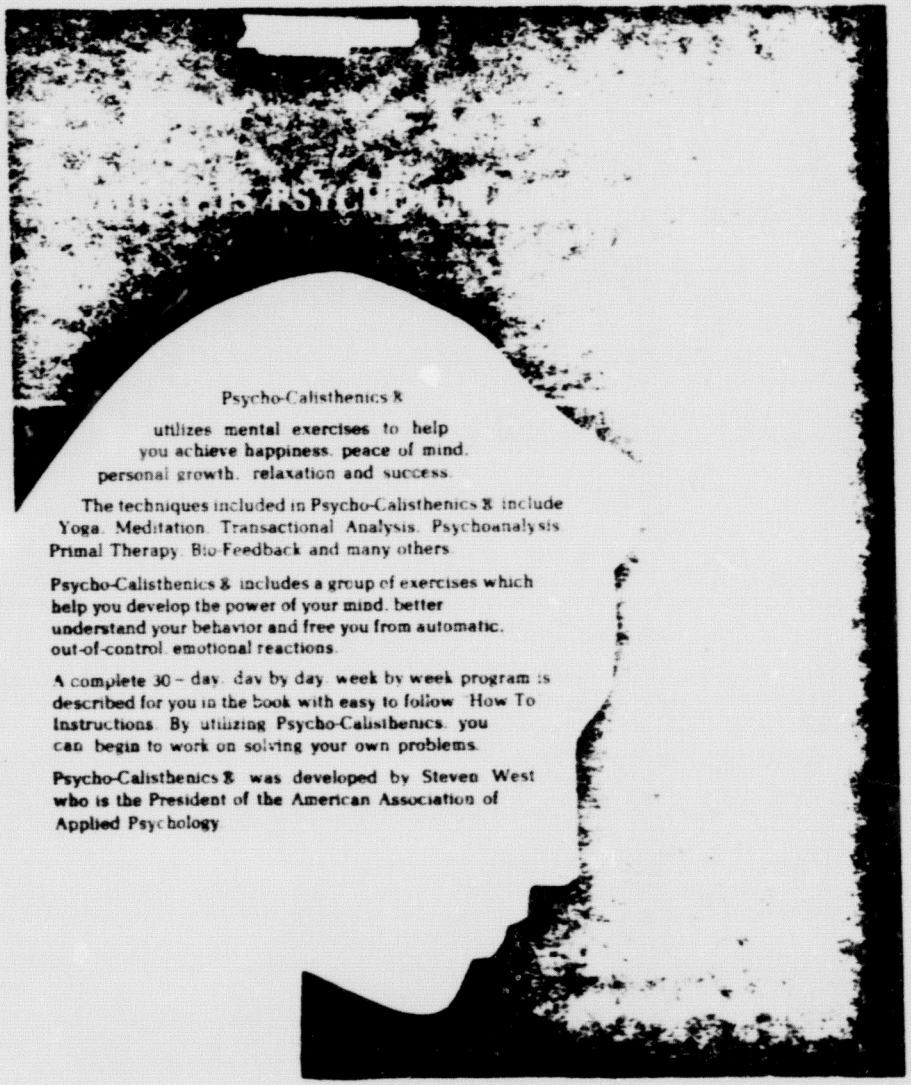


ABOUT THE AUTHOR

Steven West is the President of the American Association of Applied Psychology and in that capacity has lectured to audiences throughout the country. He also is Chairman of the Board of several multi-national corporations including The British American Publishing Company, Ltd., and Consolidated Consumer Industries.

Steven, a respected applied psychologist, was born in New York in 1941. After graduation from the famed Wharton School of the University of Pennsylvania, he completed graduate programs in psychology, metaphysics, scientology, and related subjects at the College of Divine Metaphysics, Silva Mind Control Institute and other leading human potential groups and institutes.

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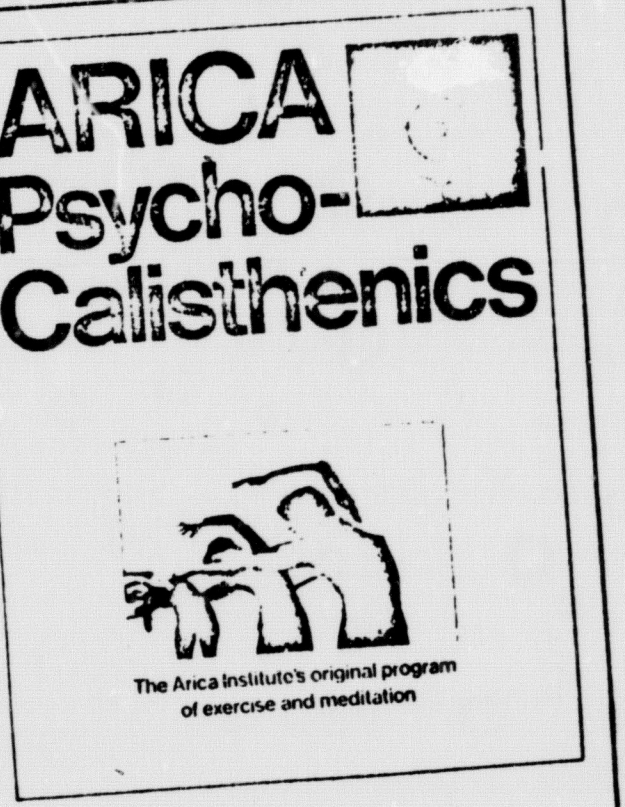
Psychocalisthenics

5 STEPS TO A PERFECT BODY AND MIND BASED ON THE ARICA INSTITUTE'S WORLD-FAMOUS PROGRAM OF EXERCISE AND ENLIGHTENMENT

Arica is the fastest-growing and most successful consciousness-raising movement of our time, with centers in every major city. Not since TM has a movement gained such extensive popularity and wide appeal. Built around the teachings of Oscar Ichazo, the Arica Institute has synthesized Eastern and Western traditions of physical and spiritual mysticism and adapted them to the modern American life-style. This first book from the Arica Institute offers the reader a complete and easy-to-follow sequence of scientifically perfected exercises for the rapid and simultaneous development of mind, body and spirit. By following the step-by-step instructions, *anyone* can learn to do Psychocalisthenics with ease.

Psychocalisthenics harmonizes the different parts of the body as it develops them. In less than a week, the exercises will make you feel more vital, more relaxed, more alive! In two weeks you can be a totally new being—happier, more alert, rejuvenated in body and mind, enjoying a new grace and harmony in every movement and an inner peace and serenity.

November, cloth, $9.95. #22237-6;
paper, $3.95. #22238-4



DEFENDANT'S EXHIBIT A - CERTIFIED COPY OF WEST'S NEW YORK STATE TRADEMARK APPLICATION FOR PSYCHO CALISTHENICS

STATE OF NEW YORK
Department of State } ss:

It is Hereby Certified, That the attached copy of application to register the servicemark PSYCHOCALISTTHENICS (S-2921) is a true copy of the original thereof registered in this office November 20, 1974 on behalf of West & Company, Inc., a Delaware Corporation, 376 Wyandanch Avenue, North Babylon, New York.

WITNESS my hand and the official seal of the Department of State at the City of Albany, this 7th day of November one thousand nine hundred and seventy-five

Secretary of State

G 110-247

STATE OF NEW YORK — DEPARTMENT OF STATE

ORIGINAL APPLICATION TO REGISTER ... SERVICE ...
FORM NO. AD-251 (REV. 11/62)

IMPORTANT: READ INSTRUCTIONS BEFORE COMPLETING FORM

1. NAME AND BUSINESS ADDRESS OF APPLICANT: West ... Company, Inc. (NAME) 376 Wyandanch Avenue (STREET), North Babylon (CITY), Suffol... (COUNTY), ... (STATE)

2. IF PARTNERSHIP, LIST NAMES AND ADDRESSES OF ALL PARTNERS.
IF CORPORATION, GIVE STATE OF INCORPORATION.

Delaware

4. DESCRIPTION OF MARK, INCLUDING DESCRIPTION OF DESIGN FEATURES, IF ANY.

Consists of the letters forming the word PSYCHOCALISTHENICS

(ATTACH EXTRA SHEETS IF REQ...)

5. THE APPLICANT IS THE OWNER OF THE MARK AND NO OTHER PERSON ... TO THE ... IN THIS STATE EITHER IN THE IDENTICAL FORM THEREOF OR IN SUCH NEAR ... SIMILAR ... THERETO AS MIGHT BE CALCULATED TO DECEIVE OR TO BE MISTAKEN THEREFOR EXCEPT:

None

6. STATE SPECIFIC SERVICES FOR WHICH MARK IS USED:

Development of mind ability. The mark will be affixed to ... ...al and literature concerning this program.

7. DESCRIBE MODE OR MANNER IN WHICH MARK IS USED.

The mark is affixed to all literature and is used to ... ...ent program.

8. CLASS NO. 107
DATE OF FIRST USE: (a) NEW YORK STATE October 1, 1974 (b) ANYWHERE ... 1974

THE UNDERSIGNED APPLIES TO REGISTER THE AFORESAID MARK PURSUANT TO ARTICLE 24 OF ... GENERAL BUSINESS LAW

(THIS SPACE FOR OFFICE USE ONLY)

Signature of Applicant: WEST & COMPANY, INC.
By: Steven West, President

STATE OF ... York
COUNTY OF ... Suffolk ss.:

Steven West ... being duly swo... ...s and says that he is President ... of ... ...(s) herein, that he has read the application and knows the contents ... that the same are true.

(SIGNATURE OF DEPO...)

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
20 1974
TAX FEE $10.00
Secretary ...

Sworn to before me this ... day of ..., 19...
(NOTARY ...)

NOTE: When an officer who ... the affiant is not qualified by ... ...rk, a further certificate of ... ...ate is required.

Mail this form with four facsimiles and check for $10.00, to
STATE OF NEW YORK, DEPARTMENT OF STATE, ALBANY 1, NEW YORK

BEST COPY AVAILABLE

DEFENDANT'S EXHIBIT B - PATENT RECORD

NO.	MARK	SER. NO. 36254
(date)	Type of Mark	Examiner
Filed Complete: NOV. 4, 1974	Serial No.: 36,254	PRINCIPAL REGISTER

and Post Office

& COMPANY, INC. DEL. CORP.
YANDANCH AVE.
BABYLON, N.Y. 11704

AMENDED
MAY 31 1976

☐ Assignee of
☐ By change of name from

Amended .....

Parts Filed { Application ..... Verification ..... Specimens ..... Drawings ..... Fee .....

CALISTHENICS

SUPERVISORY EXAMINER

EXAMINER

Address to
L C. DUBAN
D AVE.
RK, N.Y. 10017

Passed for Publication

C. DUBAN

This is to certify that annexed hereto is a true copy from the records of the United States Patent and Trademark Office of File Wrapper and Contents of the file identified above.

By authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS

Certifying Officer

Date JUN 4 1976

429a

REG. NO.	MARK	SER. NO. 36254
Registered (date)	Type of Mark	Examiner

PSYCHOCALISTHENICS

Class	Filed Complete	Serial No.
16	NOV. 4, 1974	36 254

PRINCIPAL REGISTER

Applicant and Post Office

WEST & COMPANY, INC. DEL. CORP.
376 WYANDANCH AVE.
NORTH BABYLON, N.Y. 11704

AMENDED
MAY 31 1975

☐ Assignee of
☐ By change of name from

Amended

Parts Filed: Application; Verification; Specimens; Drawings; Fee

Mark
PSYCHOCALISTHENICS

SUPERVISORY EXAMINER

EXAMINER

Send Correspondence to
MICHAEL C. DUBAN
630 3RD AVE.
NEW YORK, N.Y. 10017

Representative

Attorney
MICHAEL C. DUBAN

Associate Attorney

Passed for Publication

Passed for Registration

Other Data

AFFIDAVIT: Sec. 8; Sec. 15; Sec. 12c

Claims Ownership of Registration

Passed for Renewal

Goods—Services
PUBLICATIONS AND COURSE MATERIAL

Renewed From

First Use
OCT. 14, 1974

In Commerce
OCT. 14, 1974

MICHAEL C. DUBAN
ATTORNEY AT LAW

630 THIRD AVENUE
NEW YORK, N.Y. 10017
(212) MURRAY HILL 2-7155

October 31, 1974

Commissioner of Patents
U. S. Department of Commerce
Patent Office
Washington, D. C. 20231

Re: West & Company, Inc.
"Psychocalisthenics" Trademark

Dear Sir:

Enclosed is a check for $35 and an application for trademark registration with five ~~(5)~~ copies of the trademark for West & Company, Inc. Will you please register the trademark and notify the undersigned when this is completed.

Yours very truly,

Michael C. Duban

MCD:sm
Enc.

FORM FOR USE OF CORPORATIONS
(Instructions on reverse side)

206 1775 35254

APPLICATION FOR TRADEMARK REGISTRATION
(DECLARATION)

Mark PSYCHOCALISTHENICS
(Identify Mark)

Class No. 50
(Insert number, if known)

TO THE COMMISSIONER OF PATENTS:

West & Company, Inc.

a corporation of the State of Delaware

376 Wyandanch Avenue

North Babylon, New York 11704

The above identified applicant has adopted and is using the trademark shown in the accompanying drawing for publications and course material

and requests that said mark be registered in the United States Patent Office on the Principal Register established by the Act of July 5, 1946.

The trademark was first used on October 14, 1974, 1974; was first used in Interstate commerce on October 14, , 1974; and is now in use in such commerce.

The mark is used by applying it by printing it on the goods

and five specimens showing the mark as actually used are presented herewith.

11/07/74 PSYCHOCALISTHEN 2 201 35.00CK

Steven West declares that he is President of applicant corporation and is authorized to make this declaration on behalf of the corporation; he believes said corporation to be the owner of the mark sought to be registered; that to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

October 24, 1974
(Date)

(Signature)

[Enclose Filing Fee of Thirty-Five Dollars]

POL-301(c) (10-68)

INSTRUCTIONS

1. Insert correct name of corporation.
2. Insert the State where incorporated.
3. Insert the business address: street, city, State and ZIP Code.
4. Insert address of resident agent or corporate address if different from business address. If corporate address is the same, leave blank.
5. Name by their common, usual, or ordinary commercial name (e.g., canned fruit and vegetables) the products or goods on which the mark has actually been used.
6. Insert the date of first use anywhere on *any of the goods* recited in the application.
7. Insert the kind of commerce, i.e., "interstate" or "Territorial" (District of Columbia, Virgin Islands, Puerto Rico), or such other specified type of commerce as may be regulated by Congress. Foreign applicants must specify: "commerce with the United States."
8. Insert the date of first use on any of the goods in interstate or foreign or Territorial commerce, as the case may be.
9. Insert the method of using the mark on the goods, i.e., "to containers," "to labels applied to containers," "to tags or labels affixed to the goods," "to name plates attached to the goods," "by stamping it on the goods," or other appropriate method, and send specimen labels, or containers, or name plates, etc., showing such use. If the specimens are third dimensional, photographs should be supplied in lieu of the article itself, except if the specimen is a carton or box which can be folded to a size not exceeding 8 by 10 inches.
10. Insert name of individual executing declaration.
11. Insert official title of individual executing declaration.
12. Individual's signature.

NOTE

If an attorney at law, or other person who is recognized by the Patent Office in trademark matters, is to file and prosecute this application, a *signed* power or authorization in substantially the following form should accompany the application:

Please recognize .....,*

.....,†

with offices at .....,

to prosecute this application, to transact all business in connection therewith, and to receive the certificate.

*Insert the name of the individual attorney at law or the law firm, or other recognized individual or firm, as the case may be.

†If an individual attorney at law, insert "a member of the bar of the State of" and name the State of admission to the bar.

If a law firm, insert "a firm composed of" and list the names of the members of the firm and their States of admission.

If a recognized individual other than an attorney at law, insert Patent Office Registration number.

If a firm of nonlawyers, insert "a firm composed of" and list the members of the firm and the Patent Office Registration number of each. Names of firms of nonlawyers may not be used unless all members of such firm are recognized under Rule 2.12(b) of the Rules effective August 15, 1955.

NOTE

The drawing must be made upon pure white durable paper, the surface of which must be calendered and smooth. India ink alone must be used for pen drawings to secure perfectly black solid lines.

The size of the sheet on which a drawing is made must be 8 inches wide and 11 to 13 inches long.

A heading should be placed on the left-hand side at the top of the drawing. This heading consists of the applicant's name, his post office address, the first dates of use, and the goods.

If the application is for registration only of a word, letter, or numeral, or any combination thereof, not depicted in special form, the drawing may be the mark typed in capital letters on paper, otherwise complying with the requirements.

POL-304(e) (10-66) 50—72046-1 U.S. GOVERNMENT PRINTING OFFICE

433a

U.S. DEPARTMENT OF COMMERCE
Patent Office

pply Refer To The Following And The Filing Date

ER. NO.	2. APPLICANT	3. MARK
36254	West & Company, Inc.	PSYCHOCALISTENICS

Michael C. Duban
630 3rd Avenue
New York, N.Y. 10017

ADDRESS ONLY COMMISSIONER OF PATENTS WASHINGTON, D.C. 20231 AND FURNISH YOUR ZIP CODE AND TELEPHONE NUMBER IN ALL CORRESPONDENCE

4. PAPER NUMBER
1

5. MAILING DATE
AUG 7 1975

Registration is refused on the Principal Register because the mark, when applied to the goods and/or services, is considered to be merely descriptive thereof. Section 2(e)(1) of the trademark act; TMEP section 1207. Applicant's mark when applied to applicant's goods describes the content thereof. To wit: A systematic structure of theories concerning exercising the muscles for the purpose of gaining health.

In the event applicant wishes to further prosecute this application , attention to the following is invited:

The specimens are not acceptable because they are in the nature of mere pieces of paper with the mark printed thereon and, as such, are not regarded as evidence of actual trademark and/or service mark use. Five specimens (e.g., tags, labels, containers or photographs thereof for goods, or advertising material for services) as actually used should be submitted and the use of same as of a date at least as early as the filing date of this application must be supported either by an affidavit or by a declaration in accordance with Trademark Rule 2.20. TMEP section 808.10.

The identification of goods is not acceptable because it is indefinite. Applicant must state what is meant by the words "publications and course material" by using the common ordinary or usual name of what is intended thereby. See Rule 2.33 of the Trademark Rules.

A proper response to THIS OFFICE action must be received within 6 months from the date of this action in order to avoid ABANDONMENT.

PDL-68 (REV. 3-72)

1 — Trademark Application File Copy

To aid the Examiner in considering the registrability of the mark, applicant is requested to submit one complete issue of the publication from which the specimens filed were obtained. Trademark Rule 2.61(b).

A search of the Office records fails to show that the mark, when applied to applicant's goods and/or services, so resembles any registered mark as to be likely to cause confusion, or to cause mistake, or to deceive. TMEP section 1105.01.

(Reference in any Office action to TMEP means the Trademark Manual of Examining Procedure, First Edition January 1974, available from the Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402, for $8.10, plus $2.05 for foreign mailing. See notice in the Official Gazette of June 25, 1974.)

Lenore Lady REVIEWER

GFechter:erw 703-557-3273 Examiner Div. I

APPLICANT: WEST & COMPANY, INC.

ADDRESS: 376 Wyandanch Avenue, North Babylon, New York 11704

DATE OF FIRST USE: October 14, 1974

DATE OF FIRST USE IN INTERSTATE COMMERCE: October 14, 1974

GOODS: Literature and course material

PSYCHOCALISTHENICS

CLASS

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CONTENTS:

Application ..... *papers.*

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AUG 19 1975

ADMITTED

MAY 31 1976

8 JAN 1976

3 OCT 1975

NOV 10 1975

14 JAN 1976

14 APR 1976

DEFENDANT'S EXHIBIT M - ARICA CHRONICLE DATE JUNE 8, 1973
INTRODUCING PSYCHO CALISTHENICS

THE ARICA CHRONICLE

VOL. I NO. 10 JUNE 8, 1973

The Chronicle
This issue features many legal items, changes to the Open Path, and a special report from the Riker's Island prison project.

NEWS

Psychocalisthenics
The gym has been revised and renamed psycho-calisthenics. Enclosed is a copy, for the Houses. The psycho-calisthenics are to be used in all the Arica programs instead of the old gym, including the Open Path.

Members at large should contact their House of affiliation to get the new indications.

The Open Path Revisions
The price of the Open Path is $50. There is no student price, as this makes us look student-oriented. Instead, scholarships may be advertised and granted at the discretion of the House.

The Diet indications are no longer being passed, as they create contradiction with diet and non-diet fans alike.

Circles of Light
Circles of Light are the responsibility of each House. The exercises from the Open Path weekend can be used, along with jerfs and theater games. Diet can also be passed.

Arica Institute, Inc., charisma
The name of the Corporation has been changed to ARICA INSTITUTE, INC. Please use this new name on all advertising, stationery, announcements, etc.

We are now working to unify the charisma of Arica. To this effect, the name ARICA should be printed in gothic script, as in the letterhead, and as in the title of this ARICA CHRONICLE.

We are also working on the visual charisma of the facilities. Please send photographs or slides of your facility to the GSH, so we can unify our total charisma.

Summer Schedule
A total of 25 40-day intensives, 1 40-day extended, 12 9-day programs, 31 Open Paths and innumerable lecture-demonstrations are scheduled for this summer, throughout 22 Arica Houses. A complete copy of this schedule is enclosed.

© ARICA INSTITUTE, INC. 1973

Public-service radio announcements
Enclosed is a copy of a cover letter and a public service announcement which the Denver House is sending to the appropriate local radio stations.

As a non-profit corporation, most radio stations will let us run these announcements free. Houses are encouraged to use these or similar announcements.

PR and Advertising
Please forward clippings of all advertisements, announcements and articles about ARICA appearing in newspapers or magazines in your area, as well as copies of any posters or brochures or handouts which originate within your house. Forward this material as available to the General Service House, attention Tom Genelli.

Fall Schedules
To continue our National Publicity, we need a Fall Schedule by July 7. This schedule should include all Open Paths, 9-day and 40-day trainings scheduled between August and November, 1973.

LEGAL and FINANCIAL

Teaching of Arica material
We are concerned about unauthorized people teaching Arica work, especially the 40-day graduates. If you hear of anybody teaching Arica work who is not a member of the school, or if you hear of anybody doing unauthorized Arica workshops contact the General Service House immediately, attention David Pauker.

We must be very strict in this matter to protect our legal rights and the quality of our training.

Use of the Arica symbol
It is important, for copyright purposes, that all uses of the symbol be checked with the General Service House. Please send samples of any work to be done using the symbol to the GSH, attention David Pauker, before producing them.

Copyrighting Procedure
Until further guidelines are provided, all Houses must stamp or print every item which is handed out, mailed, or that contains Arica material. The imprint must read as follows:

© 1973 ARICA INSTITUTE, INC.
ALL RIGHTS RESERVED

These stamps have been ordered by the GSH and will be forwarded momentarily.

© ARICA INSTITUTE, INC. 1973

DEFENDANT'S EXHIBIT N - CONTRACT FOR SERVICES WITH FOREST HOSPITAL DATED DECEMBER 7, 1974

CONTRACT FOR SERVICES

IT IS HEREBY AGREED between Arica Institute, Inc., 24 West 57th Street, New York, New York 10019, (hereinafter referred to as party of the First part) and Forest Hospital, 555 Wilson Lane, Des Plaines, Illinois 60016, (hereinafter referred to as party of the Second part), as follows:

I. Party of the First part, will conduct three Open Path Trainings at the premises of the party of the Second part during the nine week period beginning on January 6, 1975 thru March 7, 1975.

Each of the three of the Open Path Trainings will be held on two consecutive days for a total of approximately 12 training hours.

The party of the First part will provide three trainers for each of the Open Path Trainings.

For each Open Path Training conducted by the party of the First part, the party of the Second part shall pay to the party of the First part a fee of Six Hundred Dollars ($600.00), or a Total of Eighteen Hundred Dollars ($1800.00).

II. During the aforementioned nine week period running from January 6, 1975 thru March 7, 1975, party of the First part will conduct a one hour Psychocalisthenics class each morning between the hours of 8 a.m. to 9 a.m., five days a week.

Said classes will be held at the premises of the party of the Second part.

The Psychocalisthenics classes will be working with one hospital ward, including both patients and staff. Attendance at said classes will be on a volunteer basis.

The first five days of classes in this program will be devoted exclusively to hospital staff. Beginning on the sixth day said classes will be open to patients who wish to join the classes.

Said classes will consist of the Arica Psychocalisthenics. As time permits other exercises will also be given as part of the classes.

For the classes in Psychocalisthenics party of the First part will provide two trainers whenever necessary.

For each of the 45 Psychocalisthenics classes conducted, party of the Second part will pay to the party of the First part a fee of Twenty Dollars ($20.00) per class or a Total of Nine Hundred Dollars ($900.00).

III. The party of the Second part will pay to the party of the First part the sum of Twenty-Seven Hundred Dollars ($2700.00), which represents the Total of its fees for the three Open Path Trainings and the

Page 2 - Contract for Services

45 - one hour Psychocalisthenics classes, on or before January 6, 1975. Such fee will be paid to Arica Institute, Inc., care of Mr. Jeff Elliott, 111 East Chestnut Street, Apt. #41K, Chicago, Illinois 60610.

IN WITNESS WHEREOF, we have hereunto set our hand and seals.

Sworn to before me this 17th day of December, 1974.

Notary Public, State of N. Y., New York County
Term Expires March 30, 1975.

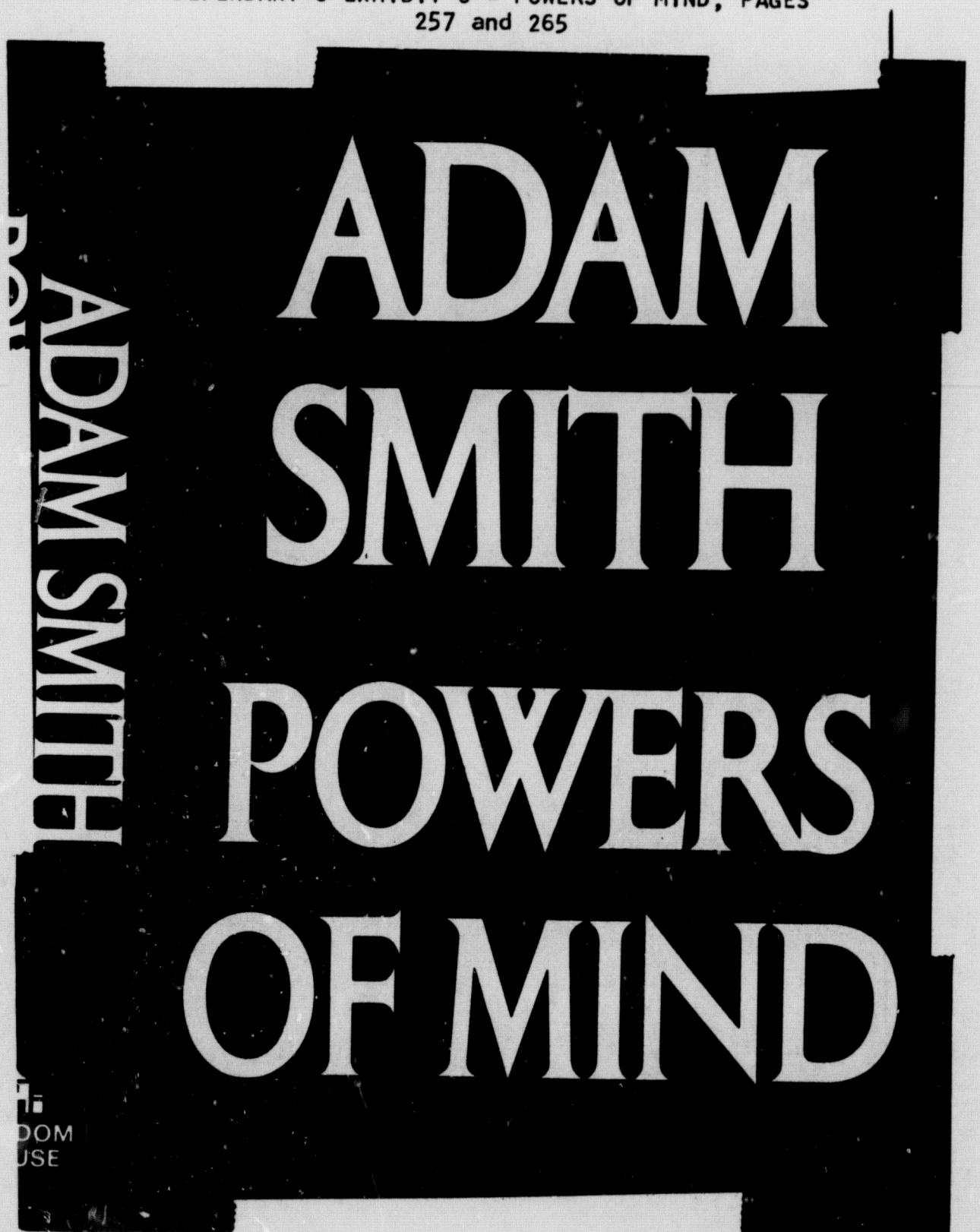
Steven Stroud
Vice-President
Arica Institute, Inc.
24 West 57th Street
New York, New York 10019

Sworn to before me this 3 day of January, 1975.

TITLE:
Forest Hospital
555 Wilson Lane
Des Plaines, Illinois 60016

Commission expires 11/1/76

DEFENDANT'S EXHIBIT O - POWERS OF MIND, PAGES 257 and 265



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pollution, depleting resources, and wars. Humanity had to come to consciousness, or face extinction.

Further: the training we were being given would never be given again. Its purpose was to train *teachers;* it would go on another two months beyond the original three, but that wouldn't cost anything, and in fact those who needed money would be paid. (I spent thirty minutes on the Finance Committee, possibly the shortest time I have ever been in any job. I was used to post-Renaissance bookkeeping: if you don't have the money in the bank, you don't pay everybody a lot, you set up reserves. One stalwart said, "I can't be in *satori* on less than $1,000 a month," and so everybody was paid $1,000 a month until the money ran out.)

The physical and experiential sectors of the training declined in favor of hours of theory, the traps for each ego type, the asanas for each ego type, and finally a theory of what Oscar called "trialectrics," everything is process. Oscar liked making up compound words: kinerhythm was moving the rock with the mantram, psychocalisthenics was the adopted hatha yoga gym, psychocatalyzers were the virtues we were to seek, "cutting the diamond" and the Ark were group exercises. Group work, Oscar said, enabled us to progress much faster than individuals in Oriental disciplines.

Arica, said Oscar, would have to become a tribe. Eventually all humanity would have to become a tribe. With the tribe taking care of needs, the individual ego trip could be given up.

The tribal community took care of some needs so well that most of the couples split up. We went through exercises to rid ourselves of the karma, or consequences of past actions, of money, sex, and power. Some of those who had money and had freed themselves of its karmic powers made contributions that supported the group, like the good tribal members they were. "Karma cleaning" was basically confession and desensitization. A sure cure for prurience is to listen to people telling the sexual story of their lives incident by incident. We would gather in small groups, sit in a circle on the floor, and recite. After three or

had everybody clapping and stamping and hollering—

—clapping and stamping and hollering? Good heavens! Mid-Manhattan Pentecostalism! The Pentecostalists lost members when they went, upwardly mobile, into the white-collar middle class and got embarrassed by the glossolalia, speaking in tongues, and coming forward for Jesus, and repenting, and now the upper middle class found its bluejean-clad youth clapping and stomping in a package from Samarkand, via Buenos Aires, with music scored for the new age. One Arica song with a contemporary beat was, "My Dear Mind, You Don't Exist." What fun!

I sat in on a seminar in Behavior and Change at a major university, taught by a friend. A graduate student was reporting on his experience at Arica. He counted himself an Arican, but he confused the seminar with those vibrational levels—"See, 6,000 is where society is, 784 is a very depressed state, and 192 is practically suicidal"—and then he began to tell of Oscar's background, how Oscar had learned these mysteries in Hong Kong and Afghanistan and Tibet—the legend was well on its way—and had studied with this very old master—Good heavens, it was my very own hickory-flavored Terry and the Pirates stories from *Psychology Today!*

And I visited headquarters. The furniture looked like Proctor & Gamble's ad agency. Films, I was told, were replacing lectures, there were audio-visual teaching aids, management consultants, cash flow charts on the walls. The staff was going to publish the "psychocalisthenics" just like the Royal Canadian Air Force exercises, and Oscar was writing his autobiography. You could take an Arica course on a sunny beach in Florida during the winter, or on a wilderness trip in the summer, or on a raft floating down the Colorado river, and you could charge it all on Master Charge. (The days of the A group and the B group and looking for the *chich* in people's books were so long ago, I was told, they were regarded with some nostalgia, like hip flasks).

DEFENDANT'S EXHIBIT L1 - LIST OF ARTICLES IN DEFENDANT'S EXHIBIT L

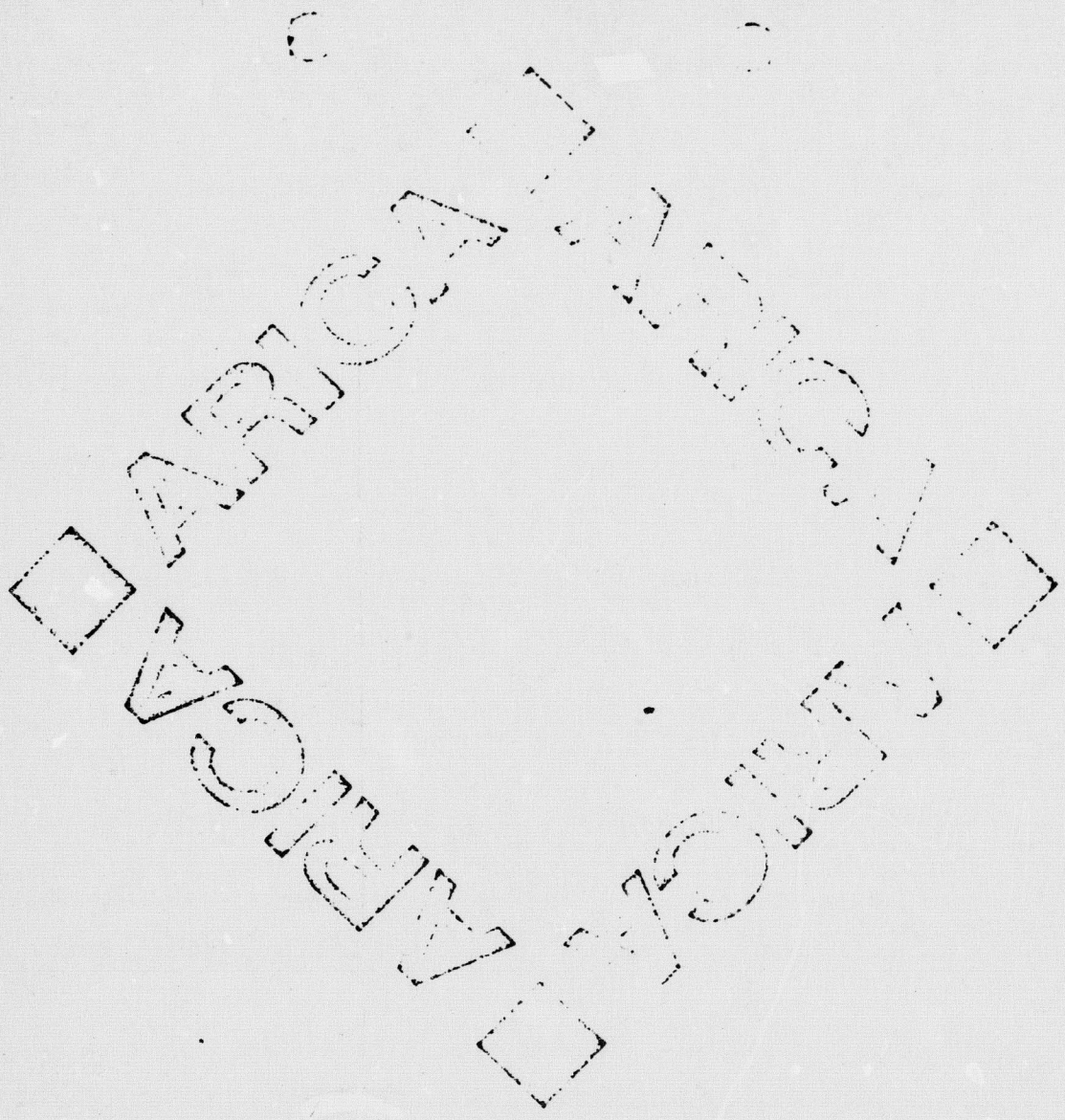
PUBLIC REFERENCES TO PSYCHOCALISTHENICS

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No.	Publication	Date
1	Honolulu Advertiser	July 18, 1973
2	[Eureka Arica]	
3	Guide to Aspen	September 1973
4	Menlo-Atherton Recorder	March 13, 1974
5	San Francisco Chronicle	May 6, 1974
6	Cin City Strip Cincinnati, Ohio	May 1974
7	Daily Mail Anderson, South Carolina	July 26, 1974
8	Atlanta Constitution	
9	Boston Phoenix	
10	The Aspen Flyer Aspen, Colorado	August 30, 1974
11	The Vancouver Sun Vancouver, Canada	
12	De Kalb New Era Decatur, Georgia	August 22, 1974
13	The Single Experience & Divorced Life Style Review	September 18, 1974
14	Austin People Today Austin, Texas	October 1974
15	The Observer & Eccentric	January 16, 1975

16	Village Voice New York, New York	January 27, 1975
17	Eastern Michigan University Newspaper	January 29, 1975
18	Texas Monthly	February 1975
19	Architectural Review London, England	February 3-7, 1975
20	Woman's Own	February 8, 1975
21	Psychologie Paris, France	March 1975
22	Chicago Tribune	March 6, 1975
23	New York Daily News New York, New York	August 13, 1975
24	Harper's Bazaar	May 1976
25	Publisher's Weekly	March 2, 1976

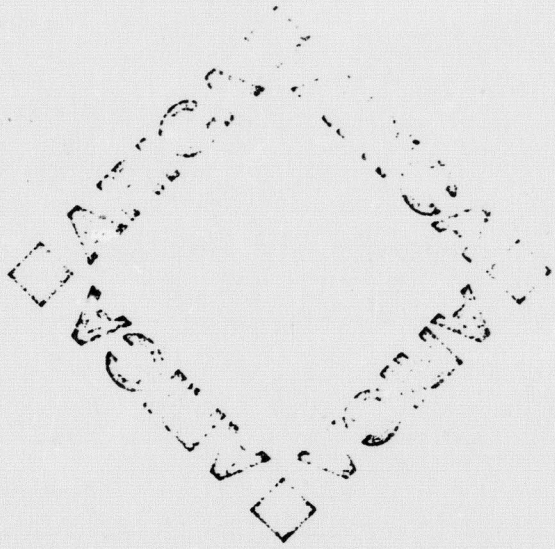
DEFENDANT'S EXHIBIT P - SEPTEMBER, 1973, ARICA COURSE ANNOUNCEMENT
RE: PSYCHO CALISTHENICS



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(5)

AN OPEN CENTER



AN OPEN CENTER

Arica offers an open center for passing methods of higher consciousness. The programs we offer focus on developing awareness and balancing the body, mind, emotions, and spirit.

In order to reach many parts of the community—people who work, people with a family, and people at school—we are making these courses available at many different times of the day and evening.

Each course contains exercises carefully chosen from the body of Arica theory and method. The exercises are synthesized from Western science and Eastern disciplines and are designed to meet the needs of contemporary man in technological society.

All courses with the exception of Chua' Ka are set up as a rotating series of six programs. A participant can attend any one session for $3.00, or enroll in a complete series for $15.00. For registration, call 262-6639.

BALANCE OF THE BODY

Psychocalisthenics

Best described as a combination of various [illegible] systems, dance, and calisthenics, PSYCHOCALISTHENICS restores the natural unity that can exist between movement and breathing. Breathing is coordinated [illegible] the direction of the movement to unite our physical [illegible] with our psyche, return a natural balance to the body, and to teach us to use the entire muscular [illegible]

Arica Dance and Movement

Have fun—feel good—spontaneous movement of opening our bodies, feeling the essential happiness within us. This program develops awareness of KATH—the place of equilibrium of our entire body. Not an anatomical point like the navel or appendix, the KATH exists as soon as we remember it.

This course includes a variety of modern and African Dance, Eurhythmics, the Fr[illegible]nce, and slow-motion stop-action dancing. These move[illegible]s restore equilibrium and increase awareness of the Yin Yang interchange that is constantly

To clear the mind of [illegible] and how to empty the mind of unless chatter to a natural state of meditation occurs with breath, and how to empty the mind of unless chatter to a natural state of meditation occurs.

Monday 8:00 p.m. / Thursday 2:00 p.m. $3.00

FORUMS ON ARICA THEORY

ARICA is a body of theory, doctrine, and method that takes into account the wisdom of the past and modern scientific knowledge to solve the problems of the present. Each Thursday evening we will focus on a different aspect of ARICA theory. Open discussion is encouraged.

October 4 — WHAT IS MAN?

October 11 — WHAT IS SOCIETY?

October 18 — HELL IS THE SUBJECTIVE
The journey of the soul or essence from the unity of the womb into duality--the split of body and essence—to the point of reintegration with the wisdom of life experience.

October 25 — LEVELS OF CONSCIOUSNESS
The scale of consciousness from subjectivity to objectivity.

November 1 — TRIALECTICS
An introduction to TRIALECTICS, a process centered system utilizing the concept of time. A natural outgrowth of previous logical and dialectical systems of reasoning, TRIALECTICS is particularly useful in analyzing change in interpersonal, organizational, and intrapsychic situations.

November 8 — PSYCHOCATALYZERS AND AXIOMS
Psychocatalyzers are reflections of reality capable of transforming the mind and its process. We discuss their implications for the awakening of man's consciousness.

All Forums are held Thursdays at 8:00 p.m. $3.00

CHUA'KA

The highest form of massage is massaging oneself, correcting our own karmic mistakes. The ancient Mongolian Warriors, called THE PURIFIED BODIES, were without fear in their bodies. To gain the natural state of courage, they studied fear seeing it:
(1) We don't know our bodies
(2) There are forbidden areas we never touch because pain is stored there.

The progressive conditions of CHUA' KA are
(1) to liberate and restore the elasticity of the big muscles
(2) to give total elasticity to the little muscles
(3) to liberate the zones of KARMA (remembered fears)

CHUA' KA is passed in an eight hour session on Saturdays from 10:00 a.m. to 6:00 p.m. Participants are required to provide their own body oil, perfume, sheet and towel. Lunch and snacks will be served. Each session covers the complete CHUA' KA process and is limited to 15 participants.

SATURDAY 10:00 a.m. to 6:00 p.m. $20.00

ARICA / Boston 815 Boylston St. Boston, 02116 (617) 262-6639

BEST COPY AVAILABLE

Wednesday 6:00 p.m. $3.00

Relaxation Techniques

Backache, stress, headaches and other tensions caused by hectic living in technological society.

Arica's techniques in relaxation are designed to break the associative patterns of everyday tensions stored in the muscles, and allow the body to respond in its natural and way.

This course focuses on practical relaxations for use during the working day and includes a deep, full body relaxation to set in a good night's rest.

Monday & Friday 12 noon / Tuesday 6:00 p.m. $3.00

Thursday 2:00 p.m. / Saturday 6:00 p.m. $3.00

Working with Sex Energy

Sexual energy is the energy which we feel inevitably in our [illegible] is correlative to classical acupuncture.

Known as CHI in Chinese medicine and martial arts, we refer the term KATH [illegible] of its mantramic value which is [illegible] effective means of concentration and projection of energy.

This class will work KATH GENERATING exercises based on the principles of Chinese Martial Arts, and will aim at channeling vital energy across the entire body.

Tuesday 8:00 p.m. / Wednesday 12:00 noon $3.00

BALANCE OF THE EMOTIONS

Mantra and Mudras

MANTRA is the study and use of vocally produced sounds. A mantram is composed of a series of objective sounds (BIJAS) designed to free the mind of its associative preoccupations.

The class will cover three types of mantram: (a) those which clarify our intellectual functions (b) those which provoke deep emotional states for those which increase our vital energy.

MUDRAS are the study of objective positions of the human body. Combining mudras with specific mantra we learn to tune the body to be receptive to the virtues of COURAGE, TRUTHFULNESS, and LOVE.

Monday 6:00 p.m. $3.00

BALANCE OF THE SPIRIT

Social Yoga

SOCIAL YOGA is the practical transmission of love as energy from one person to another. We will work several exercises to generate a spiritual state in the group and to experience the strength of the human spirit when it works with the transcendental force of love for all Humanity.

In beginning sessions we will work together in contacting and opening our essential selves, and in experiencing an essential union with another essence.

In later weeks we will work exercises to transcend the small "I" or ego and provoke a psychic transmutation which allows us to send love towards All-Humanity-as-One-Body.

Friday 6:00 p.m. $3.00

Arica Karma Cleaning

Through the years our bodies and psyches have stored the tensions of life's painful experiences. KARMA CLEANING is the use of the group process to see those experiences particularly those relating to sex, power, and money, clearly and without emotional [illegible]. Through the process we change the old anxieties and tensions to wisdom, thus freeing us to see and feel ourselves and those around us with more understanding and essential love.

Friday 8:00 p.m. $3.00

BALANCE OF THE MIND

Breathing, Meditation, Concentration

Our consciousness [illegible]

ARICA CALENDAR / FALL 1973

Monday	Tuesday	Wednesday	Thursday	Friday
	9:00 a.m. Psycho-Calisthenics		9:00 a.m. Psycho-Calisthenics	
12 noon Relaxation Techniques		12 noon Working with Sex Energy		12 noon Relaxation Techniques
	2:00 p.m. Arica Dance & Movement		2:00 p.m. Breathing, Meditation, Concentration	
6:00 p.m. Mantra and Mudras	6:00 p.m. Relaxation Techniques	6:00 p.m. Psycho-Calisthenics	6:00 p.m. Arica Dance & Movement	6:00 p.m. Social Yoga
8:00 p.m. Breathing, Meditation, Concentration	8:00 p.m. Working with Sex Energy	8:00 p.m. Introduction to Arica	8:00 p.m. Forum on Arica Theory	8:00 p.m. Arica Karma Cleaning
	8:00 p.m. Psycho-Calisthenics			SATURDAY CHUA' KA 10 a.m. 6 p.m. $20.00

EVERY WEDNESDAY NIGHT there will be an Open House Introductory Work Session beginning at 8:00 and going until 10 or 10:30 at our facility at 815 Boylston St.

THE NEXT 40-DAY TRAINING BEGINS NOV. 12. PRICE $300. FIVE-DAY TRAININGS ARE TO BE GIVEN OCT. 22-26, NOV. 22-26, DEC. 27-31, PRICE $125. OPEN PATH WEEKENDS ARE HELD THE FIRST WEEKEND OF EVERY MONTH. PRICE $40.

ARICA / Boston 815 Boylston St. Boston, 02116 (617) 262-6639

DEFENDANT'S EXHIBIT DD - STEVEN WEST'S PSYCHO-CALISTHENICS BOOK JACKET

(Submitted as Plaintiff's Exhibit 3 - pg. 424a)

DEFENDANT'S EXHIBIT EE - ADVERTISEMENT FOR WEST'S BOOK IN NEW YORK MAGAZINE DATED NOVEMBER 10, 1975

Deft's Ex #2 Id
June 2, 1976 D.C.A.

Eduardo Guarderramas, piano, Carnegie Recital Hall, at 8.
Randolph Hokanson, piano, Brooklyn College Gershwin Theater, at 8.
Manhattan Wind Symphony, Manhattan School of Music, 120 Claremont Ave. (749-2802), at 8.
Clyde Bernhardt/Harlem Blues & Jazz Band, Overseas Press Club, Hotel Biltmore, 55 E 43rd St. (687-2430) at 5:30.
Calvin Hampton, organ, Calvary Episcopal Church, Park Ave. at 21st St., at midnight.
Herbie Hancock, Carnegie Hall, at 8.

SATURDAY, NOVEMBER 8

New York Philharmonic, Avery Fisher Hall, same program as 11/6, at 8:30.
Cora Gordon, violin/The New Chamber Orchestra, Town Hall, at 8.
Vienna Choir Boys, Carnegie Hall, at 8.
The Waverly Consort, Alice Tully Hall, at 8.
Music for Young People, Metropolitan Museum, at 2:30.
Sergiu Luca, violin/Musica Aeterna Orchestra, Metropolitan Museum, at 8.
Livia Dreptin/Bill Vanever, folk, WBAI Studio C, 359 E 62nd St. (826-0880), at 9.
Harry Sargous, oboe, Carnegie Recital Hall, at 8:30.
Martina Arroyo, Whitman Hall, Brooklyn College, 8.
Baroque Concert, Carnegie Hall, Charlotte Bergen conducts, at 2:30.
Charlie Pride, Felt Forum, at 7 and 10.
Karl Kraber, flute, Brooklyn College Gershwin Theater, at 8.

SUNDAY, NOVEMBER 9

American Symphony Orchestra, Carnegie Hall, Kazuyoshi Akiyama conducts, with Bert Lucarelli, oboe; works of Berlioz, Schumann, and Beethoven, at 3.
Chamber Music Society of Lincoln Center, Alice Tully Hall, at 5.
Bela Szilagyi, piano, Alice Tully Hall, at 8.
Jorge Bolet, piano, Avery Fisher Hall, at 3.
Bonnie Raitt, Avery Fisher Hall, at 9.
Fiori Musicali Choral Society Byrd, Gustavus Adolphus Lutheran Church, 155 E 22nd St., at 2.
Lennie Martinez, jazz vespers, Central Church, Park Ave. at 64th St., at 5.
Jessie Colin Young, Beacon Theater, Broadway at 74th St. (874-1718), at 8.
Shinja Kwek, mezzo-soprano, Town Hall, at 8.
Eugene Gaub, piano, New York Historical Society, CPW at 77th St., at 2:30.
Peter Janovsky, folk, Hamilton Grange National Memorial, 287 Convent Ave. at 141st St., at 3.

MONDAY, NOVEMBER 10

New York Philharmonic, Avery Fisher Hall, Sarah Caldwell conducts, "A Celebration of Women Composers," with Gwendolyn Killebrew, mezzo-soprano, and Lenus Carlson, baritone, at 8:30.
Annette Hunt, soprano, Carnegie Recital Hall, at 8.
Maria Livia Sao Marcos, classical guitar, Alice Tully Hall, at 8.

TUESDAY, NOVEMBER 11

New York Philharmonic, Avery Fisher Hall, same program as 11/6, at 7:30.
Jacque Lesseler Trio/Richard Morris, organ, Carnegie Hall, at 8.
Manhattan Orchestra, Borden Auditorium, Manhattan School of Music, 120 Claremont Ave., at 8.
Karl Haas: Adventures in Good Music, Carnegie Recital Hall, at 8.
Juilliard School Student Concert, Alice Tully Hall, at 8:30.
Carillon Recital, The Riverside Church, Riverside Drive at 122nd St., at 12.

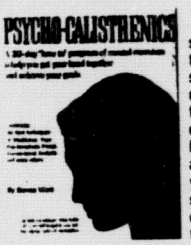
Opera

METROPOLITAN OPERA
METROPOLITAN OPERA HOUSE

Tues. 11/4 at 8: **Carmen** with Crespin, Amara, McCracken, Manuguerra. Conductor: Lewis, direc-

Introducing Psycho-Calisthenics.

It can help you get your head together.



Up to now, if you wanted to find a path leading to personal growth and happiness, you had quite a choice. An enormous, confusing choice. There are more than fifty important psychological groups. And finding the right one and getting it to work for you could take a lifetime.

Introducing Psycho-Calisthenics™ — An Exciting New Concept
This 240 page, hard-cover book could be one of the most important books you'll ever read. Its author, Steven West, President of the American Association of Applied Psychology, explored virtually every major mind science, from Alpha Mind Control to meditation—from psychiatry to Zen. He then selected the best parts from each science and developed Psycho-Calisthenics.

Psycho-Calisthenics, Explained
If you want to shape up and develop your body you can use calisthenics (physical exercises). And now, if you want to shape up and develop your mind, you can use Psycho-Calisthenics (mental exercises). These exercises are techniques to help you use the power of your mind to help solve your own problems. In just a few minutes each day, you can begin to understand your behavior, and as the expression goes, really "get your head together."

The Best Techniques in a 30-Day "How To" Program
In one exercise, you learn to stop doing things you were brainwashed into doing, and start doing what you actually want to do with your life. There is a meditation exercise which helps you relax in just three minutes, anywhere, anytime. There is a technique to analyze your dreams. And there are dozens of additional exercises.

The Results: A Healthier Mind and a Happier Life
Peace of mind, self confidence, stronger will power, ability to break bad habits, better self understanding and respect—these are just a few of the benefits Psycho-Calisthenics can bring to you. You may also make progress in your abilities to understand, persuade and love others and most important, to enjoy life.

Easy Reading, Fast Results
Psycho-Calisthenics is easy to read and follow because Mr. West takes you through each exercise step-by-step. There are many helpful drawings and photos which illustrate the text.

"This Book Was Written For You..."
who, like myself are seeking answers and tired of not knowing what questions to ask. It is for children of all ages who have deep within themselves the child, always fresh, alive, excited and loving. But it's not intended for people with serious mental problems. Underline it, write in the margins, make it your dog-eared friend, but remember, it isn't the end of your personal growth—it's just the beginning." — Steven West —

Please rush ____ copies of Psycho-Calisthenics™, personally autographed by Steven West at $9.95 per copy.
I understand that a free 33⅓ RPM Alpha Meditation record is included in the book.
To order, call (212) 751-2626.
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New York, NY 10019

Enclosed is a check for ($9.95) per copy.
Name
Address
City State Zip
Add sales tax, NYC 8%, NY State 7%.

DEFENDANT'S EXHIBIT FF - TOWN AND VILLAGE DATED APRIL 1, 1976
PAGE 5 ARTICLE RE: WEST'S APPEARANCE AT STEIN SENIOR CENTER



PSYCHOLOGY TALK: Steven West, president of the American Association of Applied Psychology, will present a lecture-demonstration at 1 p.m. Wednesday at Stein Senior Center, 301 East 29th Street. The lecture is free. West is the author of a book titled Psycho-Calisthenics.

A 202 Affidavit of Personal Service of Papers

LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

WEST & CO., INC.,

Plaintiff-Appellant-Appellee,

- against -

ARICA INSTITUTE, INC.,

Defendant-Appellee-Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

I, Victor Ortega, *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 1027 Avenue St. John, Bronx, New York

That on the 13th *day of* December *19* 76 *at* 420 Lexington Ave. New York, N.Y.

deponent served the annexed appendix (Vol. 1 & 2) *upon*

Kane, Dalsimer, Kane, Sullivan & Kurucz

the attorneys *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* Attorney(s) *herein,*

Sworn to before me, this 13th *day of* December *19* 76

Beth A. Hirsh

BETH A. HIRSH
NOTARY PUBLIC, State of New York
No. 41-4623156
Qualified in Queens County
Commission Expires March 30, 1978

Victor Ortega

VICTOR ORTEGA